

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 179

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Duke Energy Progress, LLC, and Duke)
Energy Carolinas, LLC, 2022 Biennial) PROCEDURAL ORDER
Integrated Resource Plans and Carbon)
Plan)

BY THE CHAIR: Session Law 2021-165 (S.L. 2021-165) directs the Commission to develop a Carbon Plan that takes reasonable steps to reduce carbon dioxide emissions in this State from electric generating facilities owned or operated by Duke Energy Progress, LLC (DEP), and Duke Energy Carolinas, LLC (DEC, together with DEP, Duke) by 70% from 2005 levels by 2030 and to achieve carbon neutrality by 2050.

On November 19, 2021, the Commission issued an Order Requiring Filing of Carbon Plan and Establishing Procedural Deadlines, which required Duke to file an initial Carbon Plan by April 1, 2022, and permitted intervening parties to file a plan or report of their own or an evaluation of or comments on Duke's proposed Carbon Plan within 60 days from the filing of Duke's proposed Carbon Plan.

On November 29, 2021, in response to a motion for extension of time filed by Duke, the Commission extended Duke's deadline to file its proposed Carbon Plan to May 16, 2022, and ordered that intervening parties make their responsive filings by July 15, 2022.

On April 1, 2022, the Commission issued an Order Establishing Additional Procedures and Requiring Issues to Report (April 1, 2022 Order), which stated that given the expedited nature of this proceeding due to the requirements of S.L. 2021-165, the Commission indicated its preference to resolve as many contested issues as possible without conducting an evidentiary hearing for the purpose of receiving expert testimony.¹ However, the Commission also acknowledged that certain disputed issues might require expert witness testimony. To aid the Commission in determining which issues might necessitate an expert witness hearing versus which issues are resolvable without an expert witness hearing, the Commission ordered Duke to confer with the other parties and, on or before Friday, July 22, 2022, report to the Commission on the results of that conference (Issues Report). Moreover, the Commission has required that the Issues

¹ “. . . the Commission has determined that it will attempt to resolve all issues arising in this docket based on a record developed through public witness testimony, verified filings made by persons who would otherwise be qualified to present expert testimony in a formal hearing, and written comments, rather than conducting an evidentiary hearing for the purpose of receiving expert testimony.” April 1, 2022 Order at 1.

Report identify all substantive issues that are anticipated to come before the Commission for determination in this proceeding including contested issues which merit consideration at an evidentiary hearing and those which do not. The April 1, 2022 Order also outlined the Commission's intended procedural schedule for contested issues requiring an expert witness hearing.

On June 2, 2022, Duke filed a Motion to Modify Issues Report Requirement, which requests an opportunity for all parties to file comments responsive to issues which are identified in the issues report as contested, but not meriting consideration at an evidentiary hearing. Duke's Motion is supported by the Public Staff (provided that discovery is limited to a 14-day period, which Duke states it does not support), the Carolinas Industrial Group for Fair Utility Rates II and III, and the North Carolina Electric Membership Corporation. Walmart, Person County, Broad River Energy, Carolinas Clean Energy Business Association, Clean Power Suppliers Association, Appalachian Voices, and the North Carolina Attorney General's Office do not object to Duke's Motion.

On June 6, 2022, the Carolina Utility Customers Association, the "Tech Customers" (Apple Inc., Google LLC, and Meta Platforms, Inc.), the North Carolina Sustainable Energy Association, the Southern Alliance for Clean Energy, the Natural Resources Defense Council, and the Sierra Club jointly filed comments in opposition to Duke's Motion stating that the request is premature and expressing concern that it would create an "imbalance of opportunities."

On June 8, 2022, Duke filed a response arguing that the Commission's decision "is essential prior to July 15, 2022 because it will directly influence the Issues List." Response in Opposition to Motion to Modify Issues Report Requirement at 5.

The Commission agrees that the procedures established in the Commission's April 1, 2022 Order may potentially result in contested issues being evaluated along tandem tracks – those requiring an expert witness hearing and those not. Following the filing of the Issues Report on July 22, 2022, on or before July 29, 2002, barring the unforeseen, the Commission intends to issue an updated procedural order that will (1) determine which issues, if any, will be the subject of an expert witness hearing track, (2) determine which issues, if any, will be determined solely based on a record developed through public witness testimony, verified filings made by persons who would otherwise be qualified to present expert testimony in a formal hearing, and written comments (non-hearing track), and (3) formally establish procedural deadlines necessary to resolve all contested issues, including discovery deadlines. Therefore, the Commission finds good cause to notify the parties that, if any issues are to be determined via a non-hearing track, all parties will be given equal opportunity to file responsive comments on these issues, the timing of which will be determined by the subsequent order described herein,

but which will likely overlap with the prehearing procedures outlined in the April 1, 2022 Order.

Finally, the Commission finds good cause to put all interested persons on notice that, if the Commission schedules an expert witness hearing, all counsel and witnesses will be expected to attend and participate in person.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of June, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Erica N. Green". The signature is written in a cursive, flowing style.

Erica N. Green, Deputy Clerk