

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 190

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Biennial Consolidated Carbon Plan and)	
Integrated Resource Plans of Duke Energy)	ORDER DENYING MOTION FOR A
Carolinas, LLC, and Duke Energy)	PROTECTIVE ORDER WITHOUT
Progress, LLC, Pursuant to N.C.G.S.)	PREJUDICE
§ 62-110.9 and § 62-110.1(c))	

BY THE PRESIDING COMMISSIONER: On March 15, 2023, the Commission initiated this proceeding to consider the biennial, consolidated Carbon Plan and Integrated Resource Plans (CPIRP) of Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC (together, Duke), pursuant to N.C. Gen. Stat. § 62-110.9 and § 62-110.1(c) and Commission Rule R8-60A.

On April 19, 2023, the Commission issued an order granting the joint intervention of the Carolina Industrial Group for Fair Utility Rates II and the Carolina Industrial Group for Fair Utility Rates II (collectively, CIGFUR) in this proceeding.

On January 17, 2024, the Commission issued an Order Scheduling Public Hearings, Establishing Interventions and Testimony Due Dates and Discovery Guidelines, Requiring Public Notice, and Providing Direction Regarding Duke’s Supplemental Modeling (January 17, 2024 Procedural Order), which among other things set discovery guidelines for this proceeding.

On June 10, 2024, CIGFUR filed a motion requesting that the Commission issue a protective order (Motion). More particularly, CIGFUR states that certain information responsive to a data request served by Duke is highly confidential customer information and proprietary trade secrets pursuant to N.C.G.S. § 132-1.2(1)a. and N.C.G.S. § 66-152(3).

CIGFUR describes the information as “highly confidential individualized rate impact analyses and projections prepared specifically for Charlotte Pipe & Foundry (Charlotte Pipe) by Brubaker & Associates, Inc.,” including information pertaining to (a) Charlotte Pipe’s actual electricity usage at both its Oakboro foundry and its Monroe plastics facility; (b) Charlotte Pipe’s load profile, time-of-use characteristics, and load factor at both its Oakboro foundry and its Monroe plastics facility; and (c) Charlotte Pipe’s current actual monthly electric bills at both its Oakboro foundry and its Monroe plastics facility. Motion, ¶ 5.

CIGFUR asserts that it is unable to produce the individualized rate impact analyses “unless and until a Protective Order is issued governing the limited purpose and scope of confidential disclosure in the above-referenced matter for attorneys’ eyes only.” *Id.* at ¶ 7. CIGFUR further states that Duke does not object to its Motion. *Id.* at ¶ 8.

CIGFUR requests that the Commission issue a protective order declaring the individualized rate impact analyses to be “confidential customer information” and trade secrets, restricting access to the information to legal counsel only (allow Charlotte Pipe to designate the individualized rate impact analyses and projections as “Highly Confidential Information” and “For Attorneys’ Eyes Only,”), and otherwise prohibiting disclosure of the information except in a manner consistent with the terms of the requested protective order. See Motion, 3-4.

DISCUSSION AND CONCLUSIONS

As an initial matter, the Presiding Commissioner notes that although the Commission does not regularly receive motions for protective orders, the handling of confidential materials is routine in Commission proceedings. It is the Commission’s expectation that confidential materials be handled with the utmost care by parties to ensure that the confidentiality is maintained. Further the Presiding Commissioner understands that it is common practice for parties to enter into reasonable agreements to govern the handling of confidential materials, including, but not limited to, sensitive business information, without the need for Commission intervention. For example, Duke’s direct testimony and exhibits filed in this proceeding on September 1, 2023, contain some information that Duke identified as “‘trade secrets’ under N.C.G.S. § 66-152(3).” Duke September 1, 2023, Letter to the Chief Clerk. Duke noted that “[p]ublic disclosure of this information would allow access by external vendors to proprietary development plans and projected or actual development costs for potential offshore wind development projects, which may provide commercial value to such external vendors and may ultimately result in harm to ratepayers.” *Id.* As such, and without seeking a protective order, Duke designated the information “as confidential or, in limited circumstances, highly confidential ‘lawyers’ eyes only[.]” Further, numerous parties to this proceeding have filed confidential versions of testimony and other documents with the Commission under seal pursuant to N.C.G.S. § 132-1.2.

When acting in a quasi-judicial capacity, while not bound by the North Carolina Rules of Civil Procedure, the Commission applies the rules insofar as practicable and will look to the rules for guidance. See, e.g., Order Denying Motion to Compel, *Petition for Approval of Revisions to Interconnection Standards*, No. E-100, Sub 101 (April 1, 2020); Order Issuing Subpoena to Michael J. Myers, *WLI Investments, LLC, 60 Gregory Road, Ste 1, Belville, North Carolina 28451 Complainant v. Old North State Water Company, LLC and Pluris Hampstead, LLC, Defendants*, Nos. W-1305, Sub 35, W-1300, Sub 77 (September 19, 2022). N.C.G.S. § 1A-1, Rule 26(c) governs protective orders and establishes a “good cause” standard for a court’s review of such.

On its face, CIGFUR's motion fails to explain (1) why standard practices to protect confidential information are inadequate under the circumstances, and (2) the particular harm that would result to Charlotte Pipe or CIGFUR if the rate impact information is not subject to a protective order. The Presiding Commissioner finds that without well-pled allegations responsive to these concerns, CIGFUR has failed to demonstrate good cause for the protective order. Further, in the absence of well-founded allegations otherwise, the Presiding Commissioner believes that the parties can be trusted to handle confidential material appropriately after entering into agreements to protect the confidentiality of the material.

Accordingly, CIGFUR's Motion is denied without prejudice. Should CIGFUR wish to file a new motion for a protective order with the Commission, it should plead its supporting bases with particularity, including why standard practices are inadequate in this situation, and should include a proposed draft protective order with its motion for the Commission's consideration. In reaching this decision, the Presiding Commissioner found Commission Docket No. P-55, Sub 1107 to be informative, including US LEC of North Carolina Inc.'s November 13, 1998 Motion for Entry of an Order Protecting Confidential Information.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of June, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Tamika D. Conyers".

Tamika D. Conyers, Deputy Clerk