

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1170
DOCKET NO. E-7, SUB 1169

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of | | |
| Petition of Duke Energy Progress, LLC, |) | |
| and Duke Energy Carolinas, LLC, |) | ORDER ON POST |
| Requesting Approval of Green Source |) | ORAL ARGUMENT FILINGS |
| Advantage Program and Rider GSA to |) | |
| Implement G.S. 62-159.2 |) | |

BY THE CHAIRMAN: On September 4, 2018, this matter came on for oral argument as ordered by the Commission. During the oral argument, counsel for Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP) (together, Duke), the North Carolina Sustainable Energy Association (NCSEA), and the North Carolina Clean Energy Business Alliance (NCCEBA) were unable to fully answer certain questions from the Commission during the oral argument session, and the Commission required or allowed these parties to provide a written response to the Commission's questions after the oral argument.

On September 19, 2018, NCSEA and NCCEBA filed comments responsive to the Commission's questions. On October 8, 2018, Duke also filed comments responsive to the Commission's questions.

On September 26, 2018, Duke filed a motion to strike the comments filed by NCSEA and NCCEBA on the grounds that the Commission had not authorized the filing of additional argument in the nature of sur-reply comments or post-hearing briefs. In addition, Duke objects to the substantive content of NCSEA and NCCEBA's comments as containing "numerous inaccuracies, unsubstantiated generalizations, flawed statutory interpretations, and misleading and irrelevant information, demonstrate a poor understanding of fuel cost recovery, fail to provide concrete examples, and, in some cases resort to making vague and completely unsubstantiated allegations." In the alternative to granting its motion to strike, Duke requests an opportunity to respond to NCSEA and NCCEBA's comments.

On September 28, 2018, NCSEA filed a response to Duke's motion to strike, arguing that its comments were responsive to the Commission's questions and that Duke failed to sufficiently allege that any of NCSEA's comments were "irrelevant, immaterial, or otherwise subject to being stricken by the Commission under its rules or the North Carolina Rules of Civil Procedure."

Pursuant to N.C.G.S. § 62-72 “except as otherwise provided in [Chapter 62], the Commission is authorized to make and promulgate rules of practice and procedure for the Commission hearings.” In addition, pursuant to N.C.G.S. § 62-75 the Commission is to “apply the rules of evidence applicable in civil actions, insofar as practicable.” However, the North Carolina Supreme Court has long recognized that

Ordinarily, the procedure before the Commission is more or less informal, and is not as strict as in superior court, nor is it confined by technical rules; substance and not form is controlling. In the absence of statutory inhibition, the Commission may regulate its own procedure within broad limits, and may prescribe and adopt reasonable rules and regulations with respect thereto, provided such rules are consistent with the statutes governing its actions. Great liberality is indulged in pleadings in proceedings before the Commission, and the technical and strict rules of pleading applicable in ordinary court proceedings do not apply. The Commission may adopt its own rules governing pleadings, and has the power to waive or suspend the rules. It may enlarge or restrict the inquiry before it unless a party is clearly prejudiced thereby. Such liberality and informality is essential to the workings of the Commission. In a real sense regulation of public utilities is a continuing and continuous process as to each utility, in order that regulation may be consistent with changing conditions. To bind the Commission strictly by matters pleaded might well hamper its work to the point of ineffectiveness.

State ex. rel. Utils. Com. v. Carolinas Comm. for Indus. Power Rates, 257 N.C. 560, 569 (1962) (citations omitted).

In this proceeding, the Commission is not sitting purely in its judicial capacity as a court of record. The September 4 oral argument was not part of a formal investigation where witnesses provided testimony under oath, nor is the Commission required to make findings of fact in its forthcoming final order. Instead, in this proceeding the Commission is exercising legislative functions delegated to it by the General Assembly through the enactment of N.C.G.S. § 62-159.2. Thus, this proceeding is one where it is appropriate for the Commission to relax the formal procedural requirements that would apply in the superior court and to indulge liberality and informality in pleadings, so long as no party is clearly prejudiced thereby.

The Chairman has reviewed the filings received in this docket after the oral argument. The Chairman has determined that the filings of NCSEA and NCCEBA contain statements that are responsive to the Commission’s questions and statements that are argumentative. The Chairman has further determined that the opportunity to respond to Commission’s questions in writing after the close of the oral argument is the type of liberality and informality that is appropriate for this type of proceeding; however, it was

not an invitation to further argue substantive issues. Finally, the Chairman determines that enlarging a response to the Commission's questions in a manner that includes argumentative statements clearly prejudices the other parties to this proceeding who would not be afforded an opportunity to respond to the additional argument under the Commission's traditional approach of allowing comments and reply comments, with any sur-reply comments being allowed only by leave of the Commission.

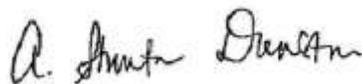
Based upon the foregoing and the entire record herein, the Chairman concludes that Duke's motion to strike should be granted, in part, and denied, in part. Because NCSEA and NCCEBA's comments contain both responsive statements and argumentative statements, the Chairman concludes that Duke's motion should not be granted in its entirety. The Chairman further concludes that Duke (and the other parties to these proceedings) would be clearly prejudiced if not afforded opportunity to respond to those argumentative statements, and, thus, Duke's motion cannot be denied in its entirety without creating the necessity for granting leave to file sur-reply comments. The Commission is well-equipped to distinguish between the statements in NCSEA and NCCEBA's comments that are responsive to the Commission's questions and those that are inappropriately argumentative. Therefore, the Chairman concludes that striking the argumentative statements from the comments filed by NCSEA and NCCEBA cures any potential prejudice that would result from a party not being afforded an opportunity to respond to these arguments. Accepting those comments that are responsive to the Commission's questions will provide the Commission with the additional information needed to reach a just result in this proceeding.

IT IS, THEREFORE, ORDERED that Duke's motion to strike filed in these dockets on September 26, 2018, shall be granted, in part, and denied, in part, as more particularly described in this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of October, 2018.

NORTH CAROLINA UTILITIES COMMISSION



A. Shonta Dunston, Acting Deputy Clerk