

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1131
DOCKET NO. E-2, SUB 1142
DOCKET NO. E-2, SUB 1103
DOCKET NO. E-2, SUB 1153
DOCKET NO. E-7, SUB 1146
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DOCKET NO. E-7, SUB 1110

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Applications by Duke Energy Carolinas, LLC,)	ORDER REQUESTING
and Duke Energy Progress, LLC, for)	COMMENTS ON
Adjustment of Rates and Charges Applicable)	PROCEDURE ON REMAND
to Electric Utility Service in North Carolina)	

BY THE COMMISSION: On February 23, 2018, and June 22, 2018, the Commission issued final orders on the general rate case applications filed by Duke Energy Progress, LLC (DEP) and Duke Energy Carolinas, LLC (DEC), respectively. Each of these orders were appealed pursuant to N.C. Gen. Stat. § 62-90, and the North Carolina Supreme Court issued an opinion on December 11, 2020, affirming the Commission's orders on most issues, and reversing and remanding the orders to the Commission for additional findings and conclusions related to the Commission's consideration of the Public Staff's equitable sharing proposal in each case. *State ex rel. Utils. Comm'n v. Stein*, Nos. 271A18 and 401A18, 2020 N.C. LEXIS 1058 (N.C. Dec. 11, 2020). Specifically, the Supreme Court directed the Commission, in reconsidering the Public Staff's equitable sharing proposal, "to consider *all* material facts of record in making that determination including, in these cases, facts pertaining to alleged environmental violations such as non-compliance with NPDES permit conditions, unauthorized discharges, and groundwater contamination from the coal ash basins in violation of the 2L Rules and to incorporate its decision with respect to the nature and extent of the utilities' violations, if any, in determining the appropriate ratemaking treatment for the challenged coal ash costs." *Id.* at *124, slip op. at 97.

Pursuant to N.C.G.S. § 62-60, only an order or decision of a majority of the Commissioners shall constitute an order or decision of the Commission. In each of these cases, only three of the Commissioners who heard the expert witness testimony remain on the Commission.

Thus, the Commission concludes preliminarily that the evidentiary record must be reopened to allow the full Commission to hear the evidence so that the Commission may make appropriate additional findings and conclusions "concerning 'all other material facts' as required by N.C.G.S. § 62-133(d)" when assessing the Public Staff's equitable sharing proposal. *Id.* at *156, slip op. at 123. Because the Supreme Court held "that the Commission

erred by rejecting the Public Staff's equitable sharing proposal without properly considering and making findings and conclusions concerning 'all other material facts' as required by N.C.G.S. § 62-133(d)," the Commission will rehear that evidence related to this issue and not to any of the other issues involved in the cases. *Id.* Further, given that the evidence at issue on remand in these cases is distinct and unique to each company, the Commission is not inclined at this time to consolidate the DEP and DEC rate cases for hearing or decision but welcomes comments on that point.

Given the foregoing, the Commission requests comments on the appropriate procedure it should employ to allow all Commissioners to participate and hear the evidence on remand — such as the extent to which relevant evidence, including exhibits, that is already in the record must be refiled or can simply be incorporated by reference; and whether live expert witness testimony is required or whether parties may agree to waive cross-examination of witnesses and only file proposed orders and briefs on the issue on remand. The Commission requests that the parties' comments thoroughly address the procedure to be employed in responding to the Supreme Court's remand. The parties' comments may also address the Commission's preliminary legal conclusions set forth in this Order and any other law or material fact believed to have bearing on any prehearing matters the Commission should consider concerning the case as remanded by the Supreme Court.

IT IS, THEREFORE, ORDERED as follows:

1. That any party may file comments as requested herein on or before December 31, 2020, on the appropriate procedure to be employed by the Commission in response to the Supreme Court's December 11, 2020 remand in these general rate cases;
2. That any party may file reply comments on or before January 8, 2021; and
3. That the Commission will issue a procedural order in these cases upon receipt and consideration of the parties' comments.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of December, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Kimberley A. Campbell". The signature is written in a cursive, flowing style.

Kimberley A. Campbell, Chief Clerk