

**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 | )                                   |
| for Adjustment of Rates and Charges      | )                                   |
| Applicable to Electric Service in North  | )                                   |
| Carolina and Performance-Based           | )                                   |
| Regulation                               | )                                   |
|  | ORDER DENYING PETITION TO INTERVENE |

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 February 1, 2023, ElectriCities of North Carolina, Inc. (ElectriCities) and North Carolina Eastern Municipal Power Agency (NCEMPA, and with ElectriCities, Petitioners) petitioned to intervene in this docket. Petitioners state that ElectriCities is a joint municipal assistance agency organized pursuant to N.C. Gen. Stat. § 159B-43 by NCEMPA and North Carolina Municipal Power Agency Number 1 (NCMPA1). ElectriCities is a membership organization providing aid and assistance to NCEMPA and NCMPA1 in connection with the operation of their electric systems and also providing management service to those agencies. NCEMPA is a joint agency organized pursuant to Chapter 159B by its members, which consist of 32 cities and towns in the areas of eastern North Carolina that DEP and Dominion Energy North Carolina (DENC) serve.

Petitioners assert that NCEMPA's member municipalities are electric power suppliers that operate distribution systems to supply their end user residents and retail customers with electric power. According to Petitioners, NCEMPA's members provide their customers with power they purchase from DEP pursuant to wholesale contracts, but various NCEMPA members are also retail customers of DEP for things like streetlights, sewer system lift stations, concession stands, irrigation pumps, and pump stations at water plants. Petitioners also state that ElectriCities itself is a retail customer of DEP.

Petitioners contend that this proceeding will impact the rates, terms, and conditions applicable to DEP's retail electric service and may have a material or prejudicial effect on the interests of various NCEMPA member municipalities. Because some NCEMPA members are DEP retail customers, Petitioners maintain that the Commission should allow Petitioners to intervene here to protect the interests of those NCEMPA members.

According to Petitioners, no other party can adequately represent or protect NCEMPA members' or ElectricCities' interests.

Pursuant to Commission Rule R1-19, any person having an interest in a Commission proceeding may become a party thereto by filing a verified petition that includes, among other things, "a clear, concise statement of the nature of the petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues in the proceeding." Commission Rule R1-19(d) provides that "[l]eave to intervene filed...in compliance with this rule and showing a real interest in the subject matter of the proceeding, will be granted as a matter of course[.]"

In *Investigation of Existing Rates and Charges Pursuant to Regulatory Condition No. 76*, Docket No. E-7, Sub 828, et al., the Commission considered a petition by NCMPA1 to intervene in a DEC general rate case. NCMPA1 and DEC were joint owners of the Catawba Nuclear Station (CNS), and parties to a Restated Operating and Fuel Agreement (OFA) under which DEC operated and provided fuel for the CNS. The OFA provided that the CNS costs would be allocated by the same methods used for allocating the costs of DEC's other generating facilities. NCMPA1 argued that it had a real interest in the decision to be made by the Commission because the Commission's decision would determine the allocation of DEC's operating costs. The Commission denied NCMPA1's petition to intervene, stating that although the Commission's cost allocation decisions might be relied upon in a dispute regarding the OFA, the Commission's decisions were not binding on DEC or NCMPA1 because the ultimate resolution of such a dispute would be made by an arbitrator. Regarding Rule R1-19, the Commission noted that "[a]lthough the right to intervention under Rule R1-19 is generous, it is not unlimited. Intervention requires a real interest in the proceeding." Order Denying Petition to Intervene at 3 (September 13, 2007) (emphasis in original).

The Chair notes that in past general rate cases, the Commission has concluded that, generally, wholesale customers of an electric public utility do not have a sufficient interest in the costs approved and allocated in retail ratemaking dockets to justify their full participation. In those dockets the Commission makes many cost recovery and cost allocation decisions that may touch on or impact the wholesale rates that the utility charges. However, the Commission does not set wholesale rates and its decisions in the context of retail ratemaking usually bear only an incidental relationship to the wholesale ratemaking process and therefore lack the force and effect that would give a wholesale customer sufficient interest in a retail ratemaking proceeding to justify its full intervention. See Order Denying Petition to Intervene and Allowing Amicus Curiae Status, *Application of Duke Energy Progress, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina*, No. E-2 Sub 1142, at 5-6 (N.C.U.C. August 10, 2017). The current petition to intervene includes some cursory information regarding ElectricCities and NCEMPA members taking retail service from DEP and DEC; more concrete and detailed information establishing a direct and real interest would be necessary to justify Petitioners' full participation as intervenors.

Based on the foregoing and the record, the Chair concludes that Petitioners' petition to intervene in this docket is denied.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the petition to intervene filed by ElectriCities and NCEMPA shall be, and is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of February, 2023.

NORTH CAROLINA UTILITIES COMMISSION

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

A. Shonta Dunston, Chief Clerk