

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1300

<p>In the Matter of</p> <p>Duke Energy Progress, LLC, for Adjustment</p> <p>of Rates and Charges Applicable to Electric</p> <p>Service in North Carolina</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Petition to Intervene of the</p> <p>North Carolina Electric</p> <p>Membership Corporation</p>
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NOW COMES the North Carolina Electric Membership Corporation (“NCEMC”) and, pursuant to North Carolina Utilities Commission (“Commission”) Rule R1-19 and in accordance with the Commission’s December 16, 2022, *Order Scheduling Investigation and Hearings, Establishing Intervention and Testimony Due Dates and Discovery Guidelines, and Requiring Public Notice*, files this Petition to Intervene.

I. Motion for Leave

NCEMC requests that it be permitted to participate in the above-referenced docket and shows unto the Commission as follows:

1. NCEMC’s attorneys, to whom all communications and pleadings should be addressed are:

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II. Procedural Background

2. On June 8, 2022, Duke Energy Progress, LLC ("DEP") filed a letter with the Commission stating their intention of a subsequent filing of a general rate application that includes a performance-based regulation application ("PBR Application") as authorized under N.C.G.S. § 62-133.16 and, pursuant to Rule R1-17B(c), requesting the Commission initiate a technical conference regarding the projected transmission and distribution ("T&D") projects to be included in DEP's PBR Application.

3. In the Order, the Commission scheduled a technical conference to be held on Monday, July 25, 2022, and stated that parties wishing to participate in the technical conference must file a petition to intervene in the proceeding and provide notice to the Commission of their intent to participate no later than July 11, 2022.

4. On June 30, 2022, NCEMC filed a petition to intervene and indicated its intention to participate in the technical conference.

5. On July 11, 2022, the Commission issued an *Order Denying Petition to Intervene and Allowing Amicus Curiae Status ("July 11 Order")*, in which it stated the following:

The present docket involves the statutorily required technical conference process that the Commission must conduct before submission of any PBR application at which the electric public utility (in this case, DEP) will present information regarding projected T&D expenditures to be included in its PBR application. The Chair concludes that NCEMC has not demonstrated a real interest in the T&D expenditures and the components of the T&D

Information Filing sufficient to justify its participation as an intervenor. (July 11 Order at 2-3)

6. The Commission therefore denied NCEMC's petition to intervene in the technical conference process but instead allowed NCEMC to participate in the technical conference as *amicus curiae*. The Commission further noted that the *amicus curiae* status would not "create the right for NCEMC to participate as a party in further proceedings in this docket or to appeal from Commission orders in this proceeding." (*Id.*).

7. The Commission further stated in its July 11 Order that:

The technical conference process is a precursor to a general rate case to be filed with a PBR application. *As noted previously, NCEMC will have another opportunity to petition the Commission to intervene in that rate case.* 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. (*Id.*) (Emphasis added)

8. To date, the Commission has granted the following parties intervention rights in this proceeding (listed in order of petitions being granted):¹ Carolina Industrial Group for Fair Utility Rates II; Carolina Utility Customers Association, Inc.; The North Carolina Justice Center, the North Carolina Housing Coalition, and the Southern Alliance for Clean Energy (jointly); North Carolina Sustainable Energy Association; Vote Solar; Natural Resource Defense Council; The Kroger Co. and Harris Teeter, LLC; The

¹ The Commission recognized the intervention and participation of the North Carolina Utilities Commission – Public Staff (Public Staff), an independent agency tasked with representing consumer interests before the Commission, pursuant to N.C.G.S. § 62-15(d), and also accepted the notice of intervention filed by the North Carolina Attorney General's Office on June 29, 2022, pursuant to the authority afforded in N.C.G.S. § 62-20.

Commercial Group; Fayetteville Public Works Commission; Sierra Club; U.S. Department of Defense and all other Federal Executive Agencies; and Haywood EMC.²

8. In addition to denying NCEMC's initial petition to intervene, the Commission also denied the February 1, 2023, petition to intervene filed by Electricities and NCEMPA. In its February 10, 2023, *Order Denying Petition to Intervene*, the Commission recognized that in general rate case proceedings,

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. (Order Denying Petition to Intervene at 2)

III. H951 Significantly Changed the Scope of a Rate Case Proceeding Sufficient to Justify Consideration of Wholesale Rate Implications of State Policy Goals in Those Proceedings

9. In this proceeding, DEP seeks to increase its base rates charged to retail customers, and to recover certain costs it has and will continue to incur through a multi-year rate plan ("MYRP") pursuant to the enabling statutes authorizing performance-based regulation ("PBR"), which were enacted into law through the passage of House Bill 951 (S.L. 2021-165, also referred to as "H951"). DEP recognized this monumental change in its October 6 application in this docket, noting that "[H951] recognizes that achievement

² In its March 15, 2023, *Order Granting Petition to Intervene of Haywood Electric Membership Corporation and Establishing Scope of Intervention* ("Haywood EMC Intervention Order"), the Commission limited the scope of Haywood EMC's intervention to retail service issues and expressly prohibited Haywood EMC from presenting any issues related to its wholesale PPA with DEP. Haywood is an independent member of NCEMC and obtains a portion of the power it provides to its customers from NCEMC. NCEMC's petition to intervene is should not be construed as impacting or modifying Haywood EMC's intervention in any manner.

of the targeted CO2 reductions requires the modernization of the ratemaking construct in North Carolina through PBR. Traditional ratemaking is no longer adequate as utilities generally shift from larger and more infrequent investments (e.g., building large-scale power plants) to smaller, more frequent investments (e.g., grid improvement and distributed energy resource investments).” Application and Request for an Accounting Order filed by DEP in Docket No. E-2, Sub 1300, at 13 (October 6, 2022) at 13. DEP further noted that its proposed “MYRP is substantially comprised of distribution and transmission projects aimed at modernizing the grid, and also includes a balanced portfolio of storage, solar and other generation projects necessary to operate the system reliably and continue the clean energy transition.” *Id.* at 5.

10. NCEMC was actively involved in the development of H951 and has a direct interest in seeing the policies and goals of the law implemented in a manner consistent with legislative intent. The cooperatives were identified, along with municipalities, as key stakeholders to be involved in the implementation of H951 before the Commission by its legislative sponsors.³ The Commission granted NCEMC’s intervention in Docket No. E-100, Sub 174, related to the rulemaking to implement PBR and MYR, and in Docket No. E-100, Sub 179, related to Duke’s overall Carbon Plan filing, on December 16, 2021. The perspectives of NCEMC as an intervenor in this proceeding is consistent with the

³ See statement by Sen. Paul Newton on October 5, 2021, before the Senate Committee on Agriculture, Energy, and Environment, in which Sen. Newton responded to the question “Are co-ops and munis [municipal power agencies] qualifying stakeholders under the bill?” by stating affirmatively that “Yes. So if this plan is being considered, and they want a voice, and they want to address the Utilities Commission about the proposed plan going forward, they are absolutely stakeholders. I don’t want there to be any confusion about that.” Audio available online at:

https://nccommittee.s3.amazonaws.com/20211005/Senate:%20%20Agriculture,%20Energy,%20and%20Environment%20--%20UPDATED/Auditorium%20LB_Senate%20%20Agriculture_1200PM_wucxdgnbdqf.mp3.

expectations of the legislative sponsors of H951 and will continue to assist the Commission in ensuring that the legislative intent supporting H951 is met.

11. The Commission further recognized the important interrelationship between DEP, DEC, and their wholesale customers. In its December 30, 2022, *Order Adopting Initial Carbon Plan and Providing Direction for Future Planning* in Docket No. E-100, Sub 179 ("Carbon Plan Order"), the Commission stated that:

The Commission recognizes that contractual arrangements between Duke and its wholesale customers associated with the operation of DER, demand reduction measures, and any compensation mechanisms associated with such resources are FERC-jurisdictional. However, the Commission acknowledges the very real potential that coordinated use of these resources has to influence a lower-cost path to compliance with N.C.G.S. § 62-110.9. Therefore, the Commission directs Duke to continue to coordinate with NCEMC and other LSEs in both its ISOP process and the Carbon Plan stakeholder process regarding the utilization of the capabilities of their DER programs and the ability of such programs to contribute to Duke's ability to comply with the carbon dioxide emissions reduction mandates of N.C.G.S. § 62-110.9 in a least cost manner that at a minimum maintains or improves the reliability of the entire grid network in North Carolina. (Carbon Plan Order at 112).

12. NCEMC will seek to engage and coordinate with DEC and DEP as provided by the Commission in the Carbon Order. In fact, many of the resources DEP seeks to begin recovering costs in this proceeding, including transmission and distribution investments and battery storage technologies under the MYRP are driven by ISOP and H951 compliance, and will have potential impacts on both costs and reliability for DEP's retail and wholesale customers. (*See, e.g.*, DEP witness Daniel Maley's October 6, 2022, testimony at 35-36 addressing the transmission portion of the proposed MYRP and discussing how the inclusion of certain projects was informed by ISOP, and discussion at 36-37, where the Red Zone Expansion Plan ("RZEP") projects, identified as necessary to

successfully execute the energy transition as proposed in the Carbon Plan, are addressed; *See also* joint testimony of DEP witnesses Meeks and Shearer at 6-11, in which they describe the battery storage projects totaling \$312 million DEP has proposed for inclusion in the MYRP).

13. Further, these projects will have potential reliability impacts for NCEMC and its members. The Commission in its Carbon Plan Order recognized that N.C.G.S. § 62-110.9(3) requires that any resource changes “maintain or improve upon the adequacy and reliability of the existing grid,” and further stated that:

This provision does not apply solely to Duke’s transmission grid or the grids of other transmission providers, and Duke must as a primary step ensure that any transmission or distribution upgrades it undertakes to interconnect the significant amounts of new resources called for in its recommended Carbon Plan pathways do not in any way negatively impact the adequacy or reliability of the existing grid across the Carolinas... Prioritizing these upgrades over other necessary upgrades could shift cost and/or reliability risk to Duke’s retail and wholesale ratepayers and is, therefore, unsustainable and incompatible with Duke’s obligation to plan and operate its system in a safe and reliable manner for all ratepayers (Carbon Plan Order at 123).

14. In addition to any related proceedings before the Commission, NCEMC will continue to actively seek to assert the interests of its member-consumers in its wholesale relationship with DEP, as well as in any proceedings before FERC in which DEP will seek to recover costs associated with any of the investments made for compliance with the Carbon Plan and other state policies.

15. Lastly, as noted in the March 13, 2023, petition to intervene filed by Haywood EMC, there will be evidence presented in this proceeding regarding a potential shared allocation of certain transmission costs as between the customers of DEP and DEC to address concerns raised during the Carbon Plan proceeding regarding the rate disparity

between the DEC's and DEP's respective retail customers as a potential interim solution pending a potential future merger of DEP and DEC. *See, e.g.*, Tr. Vol. 23, pp. 136-46, Docket No. E-100, Sub 179 (testimony of Public Staff witness James McLawhorn in response to questions from Chair Charlotte A. Mitchell and Commissioner Kimberly W. Duffley). As previously recognized by DEC and DEP, due to the different system costs and percentage of customers within each of the North Carolina retail, South Carolina retail, and wholesale jurisdictions, any potential merger or alternative allocation may create differential rate impacts for both retail and wholesale customer that must be addressed. *See* direct testimony of Peeler and Bateman at 7 in Docket No. E-100, Sub 179, at 7 (August 19, 2022). DEP sponsored direct testimony in this docket addressing a potential alternative allocation in which the costs of certain transmission investments would be paid for by both DEP and DEC customers, and it is likely that additional parties will seek to address this issue further. *See, e.g.*, Direct Testimony of DEP witness Kathryn S. Taylor, Docket No. E-2, Sub 1300, at 17-18 (Oct. 6, 2022).

IV. Standard of Review for Intervention

16. As previously noted by the Commission, Commission Rule R1-19 provides that “any party having a direct interest in a Commission proceeding may become a party thereto by filing a verified petition.” *Order Denying Petition to Intervene and Allowing Amicus Curiae Status*, Docket No. E-2, Sub 1142, at 3 (October 5, 2017), at 3. Rule R1-19(d) further provides that the Commission will grant leave to intervene where, in addition to otherwise meeting the requirements of this rule, the petition “show[s] a real interest in the subject matter of the proceeding.” The Commission has further held that “[i]n deciding

contested petitions to intervene, the Commission has used the terms ‘direct interest’ and ‘real interest’ interchangeably to express the principle that the petitioner’s stake in the matter must be direct, ‘not just an incidental or casual interest.’” *Id.* at 3, citing *Order Denying Petition to Intervene* in Docket No. E-22, Sub 412 (May 13, 2004).

17. The Commission has also indicated that its determination of whether a prospective party has a real interest in the subject matter of a proceeding is not a “one-size fits all analysis,” and that in making this determination, the Commission must undertake an individual analysis of the specific facts offered by the petitioner, and requires the petitioner to present “evidence demonstrating a personal stake in the outcome of the matter...so as to ensure that the presentation of issues, which the Commission depends on for clarity in considering the complex issues routinely before it, is well-honed and uncluttered by broad agendas.” (Haywood Intervention Order at 2). The Commission further stated that the petitioner must provide specific evidence of how its real interest stands to be “affected by the issues involved in the proceeding.” (*Id.*, citing *Order Denying Petition to Intervene*, Docket No. W-274, Sub 160, at 2 (November 18, 1997)).

V. NCEMC Has a Real and Direct Interest in this Proceeding

18. NCEMC is a generation and transmission cooperative organized pursuant to Chapter 117 of the North Carolina General Statutes and is responsible for the power supply of its 25 member distribution cooperatives throughout the State of North Carolina. Those 25 members, in turn, supply electricity to more than one million homes, farms, and businesses in which more than 2.5 million North Carolinians live and work. The distribution cooperatives have approximately 106,000 miles of lines that provide electricity

to almost 45 percent of North Carolina's land mass, with each distribution cooperative independently owning and operating the distribution system used to serve its membership.

19. In addition to generating its own power and energy, NCEMC purchases power and energy, pursuant to wholesale contracts, from DEP, Duke Energy Carolinas LLC ("DEC"), and others to supply its members in 93 counties in North Carolina. NCEMC also has joint ownership and operational interests with DEC and DEP in multiple electric generating facilities in North and South Carolina. Further, NCEMC and its member distribution cooperatives take retail service from DEP at numerous locations across the State.

20. As described above, DEP has proposed for inclusion in its MYRP significant transmission and distribution expenditures over the next three years. These investments will have direct operational and cost impacts for NCEMC and its members, as well as impacts to the long-term overall investments and operations of the transmission and distribution resources and generation facilities owned and operated by NCEMC and its members. DEP will also seek cost recovery of the portion of these expenditures allocated to its wholesale customers through its transmission rate process and other proceedings at FERC, and there is no doubt that any Orders issued by this Commission in this ratemaking proceeding in support of those public policy objectives will be considered in those proceedings and may influence or impact the determination of those rates by FERC.

21. For the reasons stated above, NCEMC and its member cooperatives have direct, substantial, and pecuniary interests that could be materially affected by the Commission's actions in this proceeding. No other party can adequately represent NCEMC's interests in this proceeding.

22. NCEMC's interest in the instant proceeding is to provide knowledge and perspective for the Commission on the planned expenditures in DEP's MYRP being driven by H951 implementation, and to also ensure that those costs are allocated equitably across DEP's retail and wholesale customers.

23. If permitted to intervene, NCEMC expects to offer evidence on, among other things, DEP's projected transmission and distribution projects and the potential impacts on NCEMC's member-consumers. NCEMC will also seek to offer evidence on how its continued efforts to improve coordination of operations with DEP can assist in reducing costs and improve reliability for both DEP's customer and the member-consumers of NCEMC and its distribution members.

24. NCEMC asks that the Commission make it a party to this proceeding and permit it to exercise all rights provided to intervenors under North Carolina law and this Commission's rules.

25. NCEMC agrees to accept electronic service of all filings in this Docket.

WHEREFORE, NCEMC respectfully requests that the Commission grants NCEMC's petition to intervene.

Respectfully submitted this the 17th day of March 2023.


**NORTH CAROLINA ELECTRIC
MEMBERSHIP CORPORATION**

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STATE OF NORTH CAROLINA**COUNTY OF WAKE**

Timothy R. Dodge swears and says under penalty of perjury:

1. He is Regulatory Counsel for North Carolina Electric Membership Corporation.
2. He has read the foregoing *Petition to Intervene* and knows its contents.
3. The matters stated in this instrument are true of his knowledge, except as to those matters that are stated to be on information and belief, and, as to those matters, he believes them to be true.


Timothy R. Dodge

Sworn to and subscribed before me
this the 17th day of March 2023.


Notary Public
Sharon A. Craft



My Commission Expires: 03/24/2025

[SEAL]

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing document has been served upon all parties of record by electronic mail, or depositing the same in the United States mail, postage prepaid.

This the 17th day of March.

/s/ Timothy R. Dodge

Timothy R. Dodge