

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1300

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Duke Energy Progress, LLC's Request to	) ORDER DENYING PETITION TO
Initiate Technical Conference Regarding	) INTERVENE AND ALLOWING
the Projected Transmission and Distribution	) AMICUS CURIAE STATUS
Projects to be Included in a Performance-	)
Based Regulation Application	)

BY THE CHAIR: On June 8, 2022, Duke Energy Progress, LLC (DEP) filed a letter with the Commission indicating that DEP intends to file a notice of its intent to file a general rate application that includes a performance-based regulation application (PBR Application) as authorized under North Carolina Gen. Stat. § 62-133.16, with the PBR Application targeted for filing no earlier than October 6, 2022. DEP, therefore, pursuant to Rule R1-17B(c), requested that the Commission initiate a technical conference regarding the projected transmission and distribution projects to be included in DEP's PBR Application.

On June 15, 2022, the Commission issued an Order Scheduling Technical Conference and Setting Procedures for Technical Conference (Technical Conference Order). In the Technical Conference Order, the Commission required that parties seeking to participate in the technical conference file a petition to intervene in the proceeding and provide notice to the Commission of intent to participate no later than July 11, 2022. The Commission also stated that declining to participate in the technical conference does not preclude interested parties from filing petitions to intervene in accordance with the procedural schedule issued regarding the PBR Application. Under the schedule set in the Technical Conference Order, DEP shall file information on projected transmission and distribution projects to be included in the PBR Application (T&D Information Filing) as required by Rule R1-17B(c)(2) no later than July 15, 2022, and parties may file written comments on DEP's T&D Information Filing on or before the date of the technical conference, July 25, 2022.

On June 30, 2022, the North Carolina Electric Membership Corporation (NCEMC) filed a Petition to Intervene. In summary, NCEMC states that it is a generation and transmission cooperative responsible for the power supply of its 25 member distribution cooperatives throughout North Carolina. NCEMC purchases power and energy, pursuant to wholesale contracts, from DEP and Duke Energy Carolinas, LLC (DEC, and together with DEP, Duke) and has joint ownership and operational interests with Duke in multiple electric generating facilities in North and South Carolina. NCEMC adds that it and its member cooperatives take retail service from Duke at multiple locations. NCEMC asserts

that the transmission and distribution (T&D) investments to be considered at the technical conference, and resulting operational changes, could have direct financial implications to NCEMC and its members. NCEMC further asserts that the compliance by Duke with the Carbon Plan requirements in S.L. 2021-165 will significantly impact the T&D infrastructure investments by Duke in North and South Carolina, and such investments will also have direct operational and financial impacts on the distribution facilities operated by NCEMC and its members and also on the NCEMC Distribution Operator (DO), which monitors and coordinates distributed energy and demand response resources, bringing operational benefits to the distribution system, optimization in the market interface, and positive system impacts on the transmission systems upstream. For these and other reasons, NCEMC states that it and its members have direct, substantial, and pecuniary interests that could be materially affected by the Commission's actions in this proceeding and that no other party can adequately represent NCEMC's interest in this proceeding.

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 "[I]leave 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 North Carolina Municipal Power Agency 1 (NCMPA) to intervene in a DEC general rate case. NCMPA 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. NCMPA 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 NCMPA'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 NCMPA 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).

Commission Rule R1-19(a)(3) requires that, in addition to the clear statement of the petitioner's interest in the subject matter of the proceeding, a petition to intervene must also include the way and manner in which such interest is affected by the issues involved in the proceeding. 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.

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. 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). NCEMC's current petition to intervene includes a cursory sentence regarding taking retail service from DEP and DEC; more concrete and detailed information establishing a direct and real interest would be necessary to justify NCEMC's full participation as an intervenor.

Based on the foregoing and the record, the Chair concludes that NCEMC's petition to intervene in the technical conference process is denied. The Chair further determines in her discretion that limited participation by NCEMC as amicus curiae is appropriate. Thus, the Commission will allow NCEMC to participate in the Technical Conference scheduled for July 25, 2022 and accept comments from NCEMC on DEP's T&D Information Filing. However, the opportunity to participate as amicus curiae shall not create the right in NCEMC to participate as a party in further hearings in this docket or to appeal from Commission orders in this proceeding.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the petition to intervene filed by NCEMC shall be, and is hereby, denied;
2. That NCEMC shall be allowed to participate in this proceeding as an amicus curiae as specified in this Order; and
3. That the Chief Clerk shall serve all future filings in this docket on the attorneys for NCEMC by electronic service, as follows:

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ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of July, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "Erica N. Green". The signature is written in a cursive, flowing style.

Erica N. Green, Deputy Clerk