

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 179

In the Matter of:)	<u>ENVIRONMENTAL</u>
Duke Energy Carolinas, LLC, and Duke)	<u>WORKING GROUP'S REPLY</u>
Energy Progress, LLC, 2022 Integrated)	<u>TO DUKE ENERGY PROGRESS,</u>
Resource Plans and Carbon Plan)	<u>LLC AND DUKE ENERGY</u>
)	<u>CAROLINAS, LLC'S RESPONSE</u>
)	<u>IN OPPOSITION TO MOTION TO</u>
)	<u>INTERVENE</u>

NOW COMES Environmental Working Group ("EWG"), pursuant to North Carolina Utilities Commission ("Commission") Rule R1-19, and hereby submits this Reply to Duke Energy Progress, LLC and Duke Energy Carolinas, LLC's (collectively, "Duke Energy") Response in Opposition to EWG's Petition to Intervene filed on June 24, 2022. In support of this Reply, EWG provides the following responses and incorporates herein by reference its Petition to Intervene ("Petition") filed on June 13, 2022, and its Response to Commission Questions ("Response") filed on June 21, 2022.

1. The Commission, like all democratically accountable institutions, derives its authority from the people. Decisions made pursuant to the Commission's authority are intended to regulate public utilities that serve the people, economy, and government of North Carolina. N.C. Gen. Stat. § 62-2(a).

2. It is not enough—particularly in the present era where the erosion of democracy seems to loom at every turn—to conclude categorically that the Public Staff and Attorney General's Office represent the interests of the people. (Duke

Energy's Response ¶ 12). Public policy considerations necessitate in favor of permissive intervention in Commission proceedings.

3. House Bill 951, a unique and first of its kind legislation, likewise requires stakeholder input, further justifying the need for broad-based public participation in the Carbon Plan process. Indeed, because the intent of the Carbon Plan is to begin to address the existential crisis of climate change that all North Carolinians face, it seems obvious that all North Carolinians—and the organizations that seek to elevate the voices of those citizens who are traditionally excluded from the complicated proceedings of the utilities and energy arena—not only have a real interest in this proceeding but are *essential* voices.

4. Finally, Executive Order No. 246, signed by Governor Cooper on January 7 of this year, stresses the importance of raising marginalized voices to promote environmental justice in North Carolina while achieving the state's carbon emissions reduction goals, and states that "Council of State members, state boards and commissions, higher education institutions, local governments, private businesses, and North Carolina entities are encouraged to incorporate environmental justice and equity considerations and benefits into their work." EWG's interest in this proceeding is largely to place the interests of underrepresented communities at the forefront of the discussions in the Carbon Plan docket.

5. The Courts have said that Rule R1-19's standards for intervention are not the same or as stringent as those necessary to establish standing for judicial processes. *In re Duke Energy Corp.*, 232 N.C. App. 573, 589, 755 S.E.2d

382, 392 (2014) (“The standards for intervention and standing are discrete and distinguishable”). Yet Duke Energy would seek to keep out the voices that EWG represents by elevating this Commission’s standards to that level. The Commission acceding to Duke Energy’s bidding in this case would establish deleterious precedent in derogation of the Commission’s mandate to develop a Carbon Plan that includes stakeholder input.

6. In stating the standard for intervention in Commission proceedings, Duke Energy primarily cites previous Commission orders¹ applying Rule R1-19 in rate cases. (Duke Energy’s Response ¶ 2). EWG acknowledges that these orders stand for the proposition that a would-be intervenor must allege a real interest in the proceedings; EWG does so in its Petition to Intervene and Response to Commission Questions. To the extent that Duke Energy relies on these orders for their factual basis rather than for their rule statements, that reliance either mistakenly or disingenuously overlooks the distinctions between those rate matters and the present case, particularly the broad scope, uniqueness, and magnitude of this Carbon Plan proceeding and its impact on all North Carolinians.

7. In its Petition to Intervene, EWG requested that it be allowed to participate fully as a party in the Carbon Plan docket claiming a real interest in this proceeding evinced in part by its strong presence in North Carolina (Petition ¶ 2); its history of working with North Carolina organizations to protect the environment

¹ *Order Denying Petition to Intervene*, Docket No. E-7, Sub 828 (Sept. 13, 2007) (denying intervention in a general rate case); *Order Denying Petition to Intervene*, Docket No. W-274, Sub 160 (Nov. 18, 1997); *Order Denying Petition to Intervene*, Docket No. E-22, Sub 412 (May 13, 2004) (denying intervention in a general rate case).

and health of all North Carolinians (Petition ¶ 3); and its significant interest on behalf of its member-supporters in the outcome of Duke Energy's Proposed Biennial Integrated Resource Plans and Carbon Plan. (Petition ¶ 4). As a basis for its opposition to EWG's intervention, Duke Energy's Response inaccurately asserts the following:

8. First, Duke Energy contends that EWG has failed to demonstrate a strong presence in North Carolina, arguing that such a presence only exists if an organization has a *physical* presence. (Duke Energy's Response ¶¶ 5-6). This argument is nonsensical. The Covid-19 pandemic has revolutionized remote work, and it is now broadly accepted that one need not be physically present in an office or state to have a presence and conduct business or advocacy there. Indeed, this Commission recognized EWG's presence in North Carolina and its real interest in the state's energy policy and utilities proceedings in the Commission's Net Metering Docket, Docket Number E-100, Sub 180. EWG has provided ample evidence of its involvement in North Carolina on behalf of its member-supporters in its Petition and Response and disagrees with Duke Energy's assertion that maintenance of a physical office in a state is the only way to establish a strong presence there. Moreover, the Commission has already granted leave to intervene in this proceeding to the Clean Energy Buyers Association, which also does not maintain a physical presence in the State of North Carolina, and has granted leave to intervene to Avangrid Renewables, LLC, whose principal place of business is in Oregon, and to RWE Offshore Windholdings, LLC, a Delaware corporation with its principal place of business in Chicago, IL.

9. Duke Energy also argues that EWG “has made no attempt to demonstrate that its social media follower[s] are, in fact, supporters . . . that the followers are located in North Carolina, or that followers’ interest in EWG has anything to do with this proceeding.”² In fact, EWG has, in its Response to Commission Questions, stated the approximate number of active member-supporters located in North Carolina who have registered to receive communications from EWG. (Response ¶¶ 10-12). Additionally, the webpage maintained by EWG where member-supporters in North Carolina can subscribe to email communications covers several North Carolina areas of interest, including news and research related to renewable energy and utilities. EWG has stated specifically that social media supporters are not included in this figure. (Response ¶ 12). Duke Energy’s argument about social media followers is a red herring attempt to confuse the Commission.

10. Duke Energy also states that “EWG has failed to even support the assertion that an ‘active email subscriber’ is fairly characterized as a ‘member’ or ‘supporter.’”³ However, EWG unequivocally explains that “member-supporters” are active email subscribers in North Carolina and defines what makes a subscriber active. (Response ¶ 10).

11. As another basis for its opposition, Duke Energy contends that the “vast majority of EWG’s historical work in North Carolina has no relevance to the subject matter of this proceeding” and “the fact that EWG was allowed to intervene in the Commission’s Net Metering Docket . . . does not mean intervention is

² (Duke Energy’s Response ¶ 6).

³ (Duke Energy’s Response ¶ 7).

appropriate here.” (Duke Energy’s Response ¶ 8). In making this argument, Duke Energy neglects the many ways in which climate change issues overlap with access to clean and safe drinking water, environmental justice, and affordable energy access. The very fact that Duke Energy does not see how these issues are related is further evidence of the need for voices like those that EWG represents to be involved in this proceeding. It is also perplexing that Duke Energy denies the issue overlap between the Carbon Plan and Net Metering dockets, given that the mandates underlying both proceedings are derived from House Bill 951. Elsewhere, in its Joint Petition for Approval of Revised Net Energy Metering Tariffs, Duke Energy admits that “the Companies believe the proposed [Net Metering] Tariffs are consistent with the spirit of H.B. 951” because it “offers a more sustainable path for customer-sited, carbon-free power generation”.⁴

12. Duke Energy further asserts that “[t]he interests stated in EWG’s Response and Petition demonstrate that it would ‘needlessly inject issues which are not central to the resolution’ of this Carbon Plan, such as EWG’s interests related to the Net Metering Docket, into this separate proceeding.” (Duke Energy’s Response ¶ 9). However, EWG has distinguished how its interests would be affected by the issues involved in the Carbon Plan proceeding particularly. (Petition ¶¶ 4-6) (Response ¶¶ 6-7). If allowed to intervene, EWG will contribute subject matter expert reports to assist the Commission in identifying and addressing issues

⁴ Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s Joint Petition for Approval of Revised Net Energy Metering Tariffs, Docket No. E-100, Sub 180 at 7 (Nov. 29, 2021).

central to the adoption of a Carbon Plan aligned with the requirements of House Bill 951.

13. Finally, Duke Energy broadly describes “EWG’s purported ‘significant interest’ in climate policy” as being “no different than the interests of any customer or citizen of North Carolina.” (Duke Energy’s Response ¶¶ 12). The fact that there is a shared interest in averting the worst impacts of climate change does not mean that EWG’s member-supporters’ interests in *how* to reduce our state’s carbon emissions are adequately represented. EWG represents to this Commission that it does intend to address different issues from similarly situated organizations and requests that it be granted leave to do so.

14. EWG has, in its Petition, Response, and Reply, affirmatively demonstrated a real interest in these proceedings. Nowhere do the Commission rules require a physical presence to prove such an interest, nor do the rules mandate any membership standard or requirement. EWG seeks intervention on behalf of its North Carolina member-supporters to address environmental justice implications in the Carbon Plan, which, while related to the issues involved in the Net Metering docket where EWG has already been granted the right to intervention, are nonetheless separate and distinct, and are essential to the formulation of a Carbon Plan that conforms to the requirements of House Bill 951.

15. In view of this Reply, its Response to Commission Questions, and its original Petition to Intervene, EWG respectfully restates its request that the Commission grant it permission to intervene and participate fully as a party to this proceeding.

Respectfully submitted this 28th day of June, 2022.

/s/ Andrea C. Bonvecchio
Andrea C. Bonvecchio
N.C. State Bar No. 56438
LAW OFFICE OF F. BRYAN BRICE, JR.
127 W. Hargett St., Ste. 600
Raleigh, N.C. 27601
Telephone: 919-754-1600
Facsimile: 919-573-4252
andrea@attybryanbrice.com

VERIFICATION

I, Andrea C. Bonvecchio, verify that the contents of the foregoing *Environmental Working Group's Reply to Duke Energy Progress, LLC and Duke Energy Carolinas, LLC's Response in Opposition to Motion to Intervene* are true to the best of my knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true. I am authorized to sign this verification on behalf of the Environmental Working Group.

/s/ Andrea C. Bonvecchio
Andrea C. Bonvecchio

Sworn to and subscribed before me

This the 28th day of June, 2022

Jeremy S. Best
Notary Public



Commission expires: 8/11/2024

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a copy of the foregoing *Environmental Working Group's Reply to Duke Energy Progress, LLC and Duke Energy Carolinas, LLC's Response in Opposition to Motion to Intervene* upon each of the parties of record in these proceedings or their attorneys of record by deposit in the U.S. Mail, postage prepaid, or by email transmission.

This the 28th day of June, 2022.

LAW OFFICE OF F. BRYAN BRICE, JR.

By: /s/ Andrea C. Bonvecchio
Andrea C. Bonvecchio