

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 190

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Biennial Consolidated Carbon Plan and	)	
Integrated Resource Plans of Duke Energy	)	
Carolinas, LLC, and Duke Energy Progress,	)	
LLC, Pursuant to N.C.G.S. § 62-110.9 and	)	ORDER DENYING PETITION TO
§ 62-110.1(c)	)	INTERVENE OF JOHN GAERTNER

BY THE PRESIDING COMMISSIONER: North Carolina General Statutes Section 62-110.9 (Carbon Plan Statute) directs the Commission to take all reasonable steps to achieve a seventy percent reduction in emissions of carbon dioxide in the State from electric generating facilities owned or operated by Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP; collectively with DEC, Duke), from 2005 levels by the year 2030 and carbon neutrality by the year 2050, subject to certain discretionary limitations. In accordance with the Carbon Plan Statute, the Commission issued an Order Adopting Initial Carbon Plan and Providing Direction for Future Planning (Initial Carbon Plan Final Order) on December 30, 2022, in Docket No. E-100, Sub 179 (Initial Carbon Plan) The Carbon Plan Statute directs the Commission to review the plan every two years after the adoption of the Initial Carbon Plan. The Initial Carbon Plan provided for the consolidation of the Carbon Plan and Integrated Resource Plan (IRP) processes (CPIRP, as consolidated) and required Duke to file its first proposed biennial CPIRP by no later than September 1, 2023.

On August 17, 2023, Duke filed a verified petition seeking the Commission's approval of its proposed 2023 CPIRP. On September 1, 2023, Duke prefiled direct testimony and exhibits of witnesses in support of its verified petition and proposed 2023 CPIRP.

On December 7, 2023, John Gaertner filed a petition with the Commission seeking to intervene in the above-captioned docket. First, Mr. Gaertner's petition indicates that he is a "Duke Energy rate-payer" and a resident of Charlotte, North Carolina. Mr. Gaertner's petition indicates that he is not represented by counsel. In describing his interest in the subject matter of the proceeding, Mr. Gaertner's petition indicates that he has "participated extensively as a reviewer of Duke Energy resource plans since 2020[,] including Duke's "Carbon Report 2020 and associated strategy, their 2022 Carbon Plan, and their 2023 CPIRP." His petition also indicates that he has volunteered as a technical expert for state and regional environmental organizations and has presented findings and recommendations on Duke's resource plans at a technical conference, through op-eds in newspapers in North Carolina, in lectures and panel discussions to the public, as an author

of a formal review report to Duke, through the previous 2022 Carbon Plan proceeding, and as a participant in Duke's 2023 CPIRP stakeholder process. Moreover, Mr. Gaertner states that he is "dedicated to addressing the issues of climate change. . . ." Additionally, Mr. Gaertner's petition indicates that he has comments and recommendations for both the Commission and Duke and intends to submit these materials through the docket for these proceedings. Mr. Gaertner's petition asserts that intervening "will ensure that comments and recommendations are received, considered, and addressed by [the Commission] and Duke Energy in a timely manner."

## STANDARD OF REVIEW

In accordance with Commission Rule R1-19, any person having an interest in the subject matter of any hearing or investigation pending before the Commission may become a party thereto and have the right to call and examine witnesses, cross-examine opposing witnesses, and be heard on all matters relative to the issues involved, by filing a verified petition. See, e.g., 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*, Docket No. E-2, Sub 1142, at 3 (Oct. 5, 2017). The verified petition must contain "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(a). 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 held that "[a]lthough the right of intervention under Rule R1-19 is generous, it is not unlimited. Intervention requires a real interest in the proceeding[.]" Order Denying Petition to Intervene, *Duke Energy Carolinas, LLC, Investigation of Existing Rates and Charges*, No. E-7, Sub 828, at 3 (Sept. 13, 2007).

When acting in a quasi-judicial capacity, while not bound by the North Carolina Rules of Civil Procedure, the Commission applies the rules insofar as practicable and will look to the rules for guidance. See, e.g., Order Denying Motion to Compel, *Petition for Approval of Revisions to Interconnection Standards*, Docket No. E-100, Sub 101 (April 1, 2020); Order Issuing Subpoena to Michael J. Myers, *WLI Investments, LLC, 60 Gregory Road, Ste 1, Belville, North Carolina 28451 Complainant v. Old North State Water Company, LLC and Pluris Hampstead, LLC, Defendants*, Docket Nos. W-1305, Sub 35, W-1300, Sub 77 (September 19, 2022). North Carolina General Statutes Section 1A-1, Rule 24 governs intervention. Relevant to the question before the Presiding Commissioner, Rule 24(a), which addresses intervention of right, provides:

(a) Intervention of right. — Upon timely application anyone shall be permitted to intervene in an action:

- (1) When a statute confers an unconditional right to intervene; or
- (2) When the applicant claims an interest relating to the property or

transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

N.C. Gen. Stat. § 1A-1, Rule 24(a)(1)-(2). Here, Mr. Gaertner generally claims a right to intervene due to some interest in the proceeding. The North Carolina Supreme Court has held that in order satisfy the requirements of Rule 24(a)(2), an applicant must show that (1) it has a direct and immediate interest relating to the property or transaction, (2) denying intervention would result in a practical impairment of the protection of that interest, and (3) there is inadequate representation of that interest by existing parties. *Harvey Fertilizer & Gas Co. v. Pitt County*, 153 N.C. App. 81, 82, 568 S.E.2d 923, 924 (2002) (reversing trial court's order allowing the intervenors to intervene as a matter of right and dismissing intervenor's appeal where intervenor had failed to show that its interest was not adequately represented by existing parties).

## **DISCUSSION AND CONCLUSION**

The Presiding Commissioner has carefully considered the petition to intervene and applicable authorities and is of the opinion that Mr. Gaertner's interest is adequately represented by existing parties, such that his petition to intervene should be denied. The Commission notes that Mr. Gaertner makes no claim and presents no information that his interest in the proceeding cannot be adequately represented by any other party in the proceeding. Further, the procedures established by the Commission to facilitate stakeholder and public participation in this proceeding allow Mr. Gaertner to engage directly with Duke and to provide his comments and recommendations to the Commission, which will become part of the record considered by the Commission in its final decision in this proceeding.

The Initial Carbon Plan proceeding was a highly contested proceeding, involving sophisticated modeling and analytical tools, and complex questions related to load dynamics, system operations, generating technologies and associated economics. While Duke has engaged in resource planning for many years, the Initial Carbon Plan proceeding was different from historical planning exercises, in that Duke's planning had to take into account the constraints of the Carbon Plan Statute and consider a significantly longer time horizon of approximately 30 years as compared to only 15 years for the traditional resource planning exercises. As reflected in the Initial Carbon Plan Final Order, the proceeding involved a number of highly technical and complex issues, many of which were associated with modeling, as well as the intervention of 45 parties and active participation in the proceeding by 30 of those parties, in addition to DEC and DEP. The Initial Carbon Plan proceeding involved an expert witness hearing that spanned three weeks. The Initial Carbon Plan proceeding gave the Commission insight into the highly technical and specialized nature of the proceeding, the significant public interest in the proceeding, and the overall complexity of the proceeding, given the number of interests involved as well as disputed technical issues. Given that the instant proceeding addresses the same subject matter and the same statutory framework, and additionally includes certain elements from

the integrated resource planning process, the Commission anticipates that the instant proceeding will mirror the Initial Carbon Plan proceeding in terms of complexity and the number of parties participating in the proceeding.

As was the case in the Initial Carbon Plan proceeding, the intervention and participation of the North Carolina Utilities Commission – Public Staff (Public Staff), an independent agency tasked with representing the using and consuming public before the Commission, has been recognized pursuant to N.C.G.S. § 62-15(d) in the instant proceeding. In addition, as was the case in the Initial Carbon Plan proceeding, the North Carolina Attorney General’s Office (AGO) has given notice of intervention in the instant proceeding in accordance with N.C.G.S. § 62-20, which affords the AGO the right to intervene in proceedings before the Commission on behalf of the using and consuming public, including utility users generally and agencies of the State. Attorney General’s Office Notice of Intervention, *Biennial Consolidated Carbon Plan and Integrated Resource Plans of Duke Energy Carolinas, LLC, and Duke Energy Progress LLC, Pursuant to N.C.G.S. § 62-110.9 and § 62-110.1(c)*, No. E-100, Sub 190 (May 17, 2023).

Both the Public Staff and the AGO represent the using and consuming public, of which Mr. Gaertner is a member as confirmed by his statement that he is a “Duke Energy rate-payer.” The Public Staff and the AGO are sophisticated parties, in that they are equipped with technical expertise and have access to the same sophisticated modeling tools utilized by Duke for purposes of this proceeding. Indeed, in the Initial Carbon Plan proceeding, both the Public Staff and the AGO proffered expert opinion and analytical evidence that involved use of the same modeling tools used by Duke. See, e.g., Direct Testimony of Edward Burgess on behalf of Attorney General’s Office, *Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, 2022 Biennial Integrated Resource Plans and Carbon Plan*, No. E-100, Sub 179 (September 2, 2022); Testimony of Jeff Thomas on behalf of the Public Staff, *Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, 2022 Biennial Integrated Resource Plans and Carbon Plan*, No. E-100, Sub 179 (September 2, 2022).

Mr. Gaertner’s petition explains that Mr. Gaertner is qualified by education, work experience, and certification as an expert in electric power engineering, resource planning and climate science, and that he is dedicated to contributing to the success of Duke’s transition to zero-carbon electricity, but his petition does not include any information that leads the Presiding Commissioner to conclude that his interest is not adequately represented by the Public Staff or the AGO. The Presiding Commissioner is not persuaded that the interest of Mr. Gaertner, who is a member of the using and consuming public, is not adequately represented by the Public Staff or the AGO. In fact, both of these parties are uniquely qualified to represent the interests of Mr. Gaertner in this CPIRP proceeding, given the complexity of the proceeding and the technical nature of the issues involved.

Moreover, as the Commission previously made clear in the Initial Carbon Plan proceeding, intervention requests demand a high level of scrutiny in the Carbon Plan proceedings “where the Commission anticipates the intervention of numerous parties and where it faces expedited statutory deadlines . . . .” Order Granting the Environmental

Working Group's Petition to Intervene and Motion for Limited Practice, at 3, Docket No. E-100, Sub 179 (July 12, 2022). Therefore, due the complexity of the CPIRP both in terms of subject matter and procedure, as well as the fact that the Carbon Plan Statute sets an ambitious and expedited deadline for the Commission's final order, the Presiding Commissioner concludes that administrative efficiency dictates limiting intervention consistent with the parameters of N.C.G.S. § 1A-1, Rule 24 where an applicant's interests are adequately represented by existing parties. The Presiding Commissioner's conclusion on this point is informed by the Commission's experience with the Initial Carbon Plan proceeding, that administrative efficiency is absolutely critical to the Commission's ability to oversee the development of a record of evidence, including through an expert witness hearing, review the record, make final decisions based on record evidence, and timely issue an order that complies with the ambitious deadline established by the Carbon Plan Statute.

Finally, the Presiding Commissioner notes that a robust set of procedures has been established to facilitate the participation in CPIRP proceedings, including the instant proceeding, by stakeholders and public witnesses. Specifically, on November 20, 2023, in Docket No. E-100, Sub 191, the Commission issued an Order adopting Commission Rule R8-60A which governs CPIRP proceedings. Rule R8-60A(h) requires Duke to inform the Commission of its process for engaging directly with stakeholders and receiving stakeholder input on Duke's proposed CPIRP. While stakeholders may be parties to the proceeding, those who are not parties to the proceeding may participate in the stakeholder process. Duke has already conducted an extensive stakeholder engagement process for the instant proceeding consisting of five stakeholder sessions over the course of four months from February 2023 through June 2023, in which Mr. Gaertner participated, as indicated by his petition. Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Verified Petition for Approval of 2023-2024 Carbon Plan and Integrated Resource Plan, Appendix A, 1, (August 17, 2023); Informational Update Regarding Completion of Stakeholder Engagement and Planned Filing Date for Carolinas Resource Plans, *Biennial Consolidated Carbon Plan and Integrated Resource Plans of Duke Energy Carolinas, LLC, and Duke Energy Progress LLC, Pursuant to N.C.G.S. § 62-110.9 and § 62-110.1(c)*, Docket No. E-100, Sub 190 (July 19, 2023). Additionally, in the instant proceeding, the Commission has opened Docket No. E-100, Sub 190CS for the purpose of receiving consumer statements of position and comments from interested members of the public. Further, the Commission has scheduled public witness hearings to be held on April 9, 2024, in Asheville, on April 10, 2024, in Charlotte, on April 29, 2024, in Wilmington, on April 30, 2024, in Durham, and virtually on April 23, 2024. Order Scheduling Public Hearings, Establishing Interventions and Testimony Due Dates and Discovery Guidelines, Requiring Public Notice, and Providing Direction Regarding Duke's Supplemental Modeling, *Biennial Consolidated Carbon Plan and Integrated Resource Plans of Duke Energy Carolinas, LLC, and Duke Energy Progress LLC, Pursuant to N.C.G.S. § 62-110.9 and § 62-110.1(c)*, No. E-100, Sub 190 (January 17, 2024). Mr. Gaertner may submit his comments and recommendations to the Commission by filing them in Docket No. E-100, Sub 190CS and may provide testimony directly to the Commission at any of the public witness hearings.

For the foregoing reasons, although the Presiding Commissioner appreciates Mr. Gaertner's general expression of interest in the subject matter of this docket, the

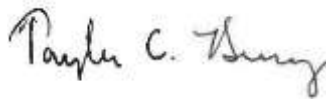
Presiding Commissioner concludes that Mr. Gaertner's petition to intervene should be denied. The Commission encourages Mr. Gaertner to continue to engage with Duke through further stakeholder processes and to participate in the public witness process. The Commission also notes Mr. Gaertner's statement in his petition that he is already planning to submit "important comments and recommendations for both the NCUC and for Duke Energy" in the docket, which may be accomplished during a public witness hearing or by filing comments in Docket No. E-100, Sub 190CS. To the extent that Mr. Gaertner participates in the proceeding as a public witness or files comments in Docket No. E-100, Sub 190CS the information he offers will be considered by the Commission in its final decisions. In doing so, Mr. Gaertner's stated interest in intervening in this proceeding to ensure that his comments and recommendations are received and considered by the Commission will be accomplished.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of January, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Taylor C. Berry". The signature is written in a cursive, flowing style.

Taylor C. Berry, Deputy Clerk