

**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) ORDER DENYING MOTION
Resource Plans of Duke Energy Carolinas, LLC,) FOR RECONSIDERATION OF
and Duke Energy Progress, LLC, Pursuant to) BRAD ROUSE
N.C.G.S. § 62-110.9 and § 62-110.1(c))

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 Order) on December 30, 2022, in Docket No. E-100, Sub 179. 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 Order 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, and on September 1, 2023, Duke prefiled direct testimony and exhibits of witnesses in support of its verified petition and proposed 2023 CPIRP.

On January 8, 2024, Brad Rouse filed a petition with the Commission seeking to intervene in the above-captioned docket (the Petition). The Petition indicated that he is a "customer of Duke Progress" and a resident of Asheville, North Carolina. Petition, ¶ 1. The Petition made no indication as to whether he is represented by counsel. In describing his interest in the subject matter of the proceeding, the Petition indicated that Mr. Rouse "has testified before utilities commissions in Montana and Georgia, and in 2022 he intervened pro se before this [C]ommission in Docket No. E-100, Sub 179, calling himself as an expert witness in that case." *Id.* at ¶ 5. The Petition also indicates that he "has been deeply involved in community activities to move the [City of Asheville] and [Buncombe County] to a cleaner energy future." *Id.* at ¶ 3. Additionally, the Petition provided that his "heirs and descendants will be deeply affected by the extent to which our society succeeds in addressing the existential climate crisis. Duke's Carbon Plan is an essential element of our region's response to the climate crisis." *Id.* at ¶ 2. Ultimately, his Petition concluded that "his

testimony can be of value to the [C]ommission given his background and experience.” *Id.* at ¶ 5.

On January 18, 2024, the Commission issued an order denying the Petition (Order). After careful consideration and based upon application of Commission Rule R1-19 and N.C. Gen. Stat. § 1A-1, Rule 24, the Commission concluded that

Mr. Rouse’s interest is adequately represented by existing parties, such that his petition to intervene should be denied. The Commission notes that Mr. Rouse 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. Rouse 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.

Order, 3. More particularly, the Commission noted that the North Carolina Utilities Commission – Public Staff (Public Staff) and the North Carolina Attorney General’s Office (AGO) have intervened for the purpose of representing the interests of the using and consuming public, which is inclusive of Mr. Rouse. Further, given the complexity of the proceeding, the technical nature of the issues involved, and the importance of administrative efficiency 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,” the Commission found that it was appropriate to limit interventions consistent with the applicable Commission rule and State law. *Id.* at 5. Finally, the Order noted that robust procedures had been established in the proceeding that would allow Mr. Rouse to participate in the stakeholder process, to testify before the Commission, to file his recommendations to the Commission, and to have his evidence made part of the record.

On March 14, 2024, Mr. Rouse filed a second petition to intervene. The second filing acknowledges that Mr. Rouse’ Petition was denied by the Commission on January 18, 2024, presents revised information for the Commission’s consideration, and requests that the Commission grant his request to intervene.

STANDARD OF REVIEW

Given that the second petition to intervene includes additional information for the Commission’s consideration and that the Commission has already ruled on Mr. Rouse’s Petition, the Presiding Commissioner finds it appropriate to treat the second petition to intervene as a motion for reconsideration pursuant to N.C.G.S. § 62-80 (Motion).

As provided in N.C.G.S. § 62-80, “[t]he Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made

by it.” The Commission’s decision to rescind, alter, or amend an order upon reconsideration under N.C.G.S. § 62-80 is within the Commission’s discretion. *State ex rel. Utilities Comm’n v. MCI Telecommunications Corp.*, 132 N.C. App. 625, 630, 514 S.E.2d 276, 280 (1999). However, the Commission cannot arbitrarily or capriciously rescind, alter, or amend a prior order. Rather, there must be some change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter, or amend a prior order. *State ex rel. Utilities Comm’n v. North Carolina Gas Service*, 128 N.C. App. 288, 293-94, 494 S.E.2d 621, 626, rev. denied, 348 N.C. 78, 505 S.E.2d 886 (1998) (holding that in absence of any additional evidence or change in conditions, the Commission has no power to reopen proceeding and modify or set aside its prior order).

DISCUSSION AND CONCLUSION

The Motion reiterates and expounds upon the information previously provided in his Petition. Specifically, the Motion reiterates Mr. Rouse’s professional experience working in the field of utility integrated resource planning, including leading the development of the first economics-based load forecasting system for Carolina Power and Light, a corporate predecessor to DEP. Motion, ¶ 2. The Motion indicates that as an employee of Energy Management Associates in the 1980s and 1990s, Mr. Rouse led the development of a suite of products for integrated resource planning and that EnCompass, the modeling tool currently used by Duke, is an adaptation of one of the products he developed. *Id.* The Motion asserts “[i]n the very real sense, [Mr. Rouse is] one of the original authors of EnCompass.” *Id.* The Motion indicates Mr. Rouse’s position that Duke has been misusing EnCompass by relying on short period optimization, that Duke was inadequately responsive to the Initial Carbon Plan Order, and that “the misuse continues at the very core of their proposed pathways, potentially leading to higher rates, greater carbon emissions, and billions in sunk costs.” *Id.* The Motion indicates that Mr. Rouse’s “interest is that [he] wish[es] to ensure the Commission understands and focuses on correcting this misuse of [his] professional legacy.” *Id.*

Finally, the Motion explains that Mr. Rouse has “a deep personal interest in this case as a result of [his] commitment to address the climate crisis,” and contends that “[i]t is not likely that other intervening parties or my providing public comments will adequately serve these interests.” *Id.* at ¶ 4. Specifically, the Motion states that:

Based on my experience intervening in the 2022 case, I understand that the AGO, Public Staff, or other intervenors are concerned about rates, about the need to reduce carbon emissions, about the ability of other entities to meet climate goals, and the hope that the final process has a good methodology and does not misuse a key analytical tool.

However, I do not believe that they can adequately represent the above interests in combination as there is no other intervenor that brings these four perspectives together as a whole. There is no other intervenor that is a customer of Duke, actively involved in climate issues for over a decade, deeply involved in an NC county’s decarbonization efforts and who is an originating author of the key analytical tool used by Duke. Due to the complex

technical nature of my concerns, I do not believe that public commentary alone is sufficient to serve my interests.

Id.

Based upon the careful consideration of the Motion, the Presiding Commissioner concludes that Mr. Rouse has provided no new evidence or change in conditions that provides a basis upon which the Commission may amend its previous order denying the Petition. While the Motion expounds on Mr. Rouse's qualifications as an expert and his observations of Duke's use of EnCompass, this information is not sufficient to persuade the Commission to reach a different conclusion as to his right to intervene in the CPIRP proceeding.

As indicated in the Order, the Initial Carbon Plan proceeding was a contested legal proceeding, involving sophisticated modeling and analytical tools, and complex questions related to load dynamics, system operations, generating technologies, and the associated economics. As the Order explains, the Initial Carbon Plan proceeding involved a number of technical and complex issues, as well as the intervention of 45 parties and active participation in the legal proceeding by 30 of those parties, in addition to DEC and DEP. The Initial Carbon Plan was heavily litigated, involving months of discovery and an expert witness hearing that spanned approximately three weeks.

As previously made clear in the Initial Carbon Plan proceeding and reiterated in the Order, intervention requests demand a high level of scrutiny in proceedings such as the Carbon Plan "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, No. E-100, Sub 179 (N.C.U.C. July 12, 2022). As indicated in the Order, given the Commission's experience gained from the Initial Carbon Plan proceeding, administrative efficiency is critical to the Commission's ability to oversee the efficient development of a record of evidence, including through an expert witness hearing, to review the record, to make final decisions based on record evidence, and to issue timely an order that complies with the ambitious deadline established by the Carbon Plan Statute. The Order concluded that administrative efficiency dictated denying Mr. Rouse's Petition. While the Motion includes additional information regarding Mr. Rouse's qualifications and observations related to EnCompass, that information is not sufficient to persuade the Presiding Commissioner to reach a different conclusion, particularly as to administrative efficiency. While Mr. Rouse may have knowledge and experience related to the subject matter of the proceeding, the Commission is not persuaded that his qualifications enable him to participate in a multi-party, heavily litigated, complex, and technical legal proceeding in a manner that does not jeopardize administrative efficiency.

However, the decisions to deny Mr. Rouse's Petition and Motion do not preclude his participation in the CPIRP proceeding or prevent him from providing his recommendations to the Commission. As previously indicated in the Order, the procedures established by the Commission to facilitate stakeholder and public participation in this proceeding allow Mr. Rouse to engage directly with Duke and to provide his testimony, comments, and

recommendations directly to the Commission, which will become part of the record considered by the Commission in its final decision in this proceeding.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of April, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Tamika D. Conyers". The signature is written in dark ink and is positioned above the printed name.

Tamika D. Conyers, Deputy Clerk