

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION  
DOCKET NO. E-2, SUB 1142**

<b>In the Matter of:</b>	)	
<b>Application of Duke Energy Progress, LLC,</b>	)	<b>NCSEA’S RESPONSE TO</b>
<b>for Adjustment of Rates and Charges</b>	)	<b>CHARAH MOTION</b>
<b>Applicable to Electric Service in North</b>	)	
<b>Carolina</b>	)	

**NCSEA’S RESPONSE TO CHARAH MOTION**

On June 27, 2017, Charah, LLC (“Charah”) filed a *Petition to Intervene and Motion for Protective Order by Charah, LLC* (“*Motion*”) in the above-captioned proceeding with the North Carolina Utilities Commission (“Commission”). On June 30, 2017, the Public Staff – North Carolina Utilities Commission (“Public Staff”) and Duke Energy Progress, LLC (“DEP”) both filed responses to Charah’s Motion. The North Carolina Sustainable Energy Association (“NCSEA”), an intervenor in the above-captioned proceeding, files this response to Charah’s Motion for Protective Order, and requests that the Commission deny the motion.<sup>1</sup> In support of this response, NCSEA respectfully shows the Commission:

1. Charah asserts that it is a contractor of DEP, that its contract with DEP constitutes confidential information pursuant to G.S. 132-1.2,<sup>2</sup> and that disclosure of its contract with DEP to the public will cause Charah irreparable harm. Charah requests “the entry of a

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<sup>1</sup> In its Motion, Charah also petitions the Commission to intervene in the above-captioned proceeding. NCSEA does not take a position on Charah’s Petition to Intervene.

<sup>2</sup> The Commission requires that parties asserting claims of confidentiality “submit a detailed and cogent statement of the reasons for filing information under seal” and “that parties refrain from including non-confidential information in their claim for confidentiality of trade secrets.” *Order Declining to Adopt Proposed Settlement Rules*, p. 17, Docket No. M-100, Sub 145 (March 1, 2017). It is not apparent to NCSEA that Charah has provided the Commission with sufficient information to make a determination that the contract for which it seeks a protective order is exempt from the Public Records Act.

protective order to prevent the disclosure of its proprietary trade secrets reflected in its contract documents with DEP.” Motion, para. 10. However, Charah’s motion does not make clear who it is requesting the Commission prevent from accessing its contract. Charah states both that it does not object to the disclosure of its contract to the Public Staff, Motion, para. 5, or to the disclosure of its contract to both the Public Staff and the N.C. Attorney General’s Office, Motion, para. 16. NCSEA strongly believes that any discoverable information or data that is available to one party should be available to all parties that have executed appropriate confidentiality agreements.

2. Charah states that it “has no objection to the disclosure of such documents to the Public Staff[]” because it “understands that these documents are (or have been) produced subject to a standing non-disclosure agreement between DEP and the Public Staff.” Motion, para. 5. NCSEA notes that there is also a standing non-disclosure agreement between DEP and NCSEA, but Charah provides no rationale as to why the Public Staff should be allowed access to its contract but NCSEA, or any other similarly situated party, should not.

3. Ultimately, Charah “objects to the disclosure of its proprietary information contained in its contract documents with DEP to G&M[,]” a potential competitor of Charah’s that has been retained by the Public Staff. Motion, para. 6. However, Charah also states that it does not object to disclosure of its contract to the Public Staff. Motion, para. 5 and 16. Thus, it would appear that Charah would allow the Public Staff access to its contract with DEP, but would not allow access by a company retained by the Public Staff, who is also a signatory of a confidentiality agreement. *See, Response to Charah Petition and Motion*, para. 5 (June 30, 2017). If this does reflect Charah’s request, then the

Commission would adopt a troubling policy if it grants Charah's request. Because of the breadth of the Commission's jurisdiction under Chapter 62 of the North Carolina General Statutes, nearly all parties that appear before the Commission rely on outside consultants or experts at one time or another. To prohibit specific outside consultants or experts from accessing certain documents would result in parties presenting the Commission with incomplete information, thereby frustrating the Commission's work.

4. As of this filing, the Commission has granted six parties intervention in the above-captioned proceeding, in addition to the participation of the Public Staff and the N.C. Attorney General's Office. The intervenors represent a diverse range of public policy, business, and ratepayer interests, and have all been judged by the Commission, in its discretion, to have a real interest in the above-captioned proceeding. Charah has not provided sufficient rationale or support for its request that the Commission treat these intervenors, all of whom have been judged to have a real interest in the proceeding, differently from the Public Staff and the N.C. Attorney General's Office. As such, NCSEA respectfully requests the Commission deny Charah's Motion.

Respectfully submitted, this the 3rd day of July, 2017.

/s/ Peter H. Ledford  
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**CERTIFICATE OF SERVICE**

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Comments by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 3rd day of July, 2017.

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