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November 7, 2019

VIA ELECTRONIC FILING

Ms. Kimberley A. Campbell
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street, Dobbs Building
Raleigh, North Carolina 27603

Re: *Duke Energy Carolinas, LLC's Response in Opposition to Vote Solar's Motion to Compel*
Docket No. E-7, Sub 1214

Dear Ms. Campbell:

Enclosed for filing on behalf of Duke Energy Carolinas, LLC in the above-referenced proceeding is its *Response in Opposition to Vote Solar's Motion to Compel*.

Thank you for your assistance with this matter. If you have any questions regarding this filing, you may reach me at the number shown above.

Sincerely,

/s/ James H. Jeffries IV
James H. Jeffries IV

JHJ/sko

Enclosures

cc: All Parties of Record
John Burnett
Camal Robinson
Mary Lynne Grigg

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 1214

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Application of Duke Energy Carolinas,)	DUKE ENERGY CAROLINAS,
LLC For Adjustment of Rates and)	LLC’S RESPONSE IN
Charges Applicable to Electric Service)	OPPOSITION TO MOTION TO
in North Carolina)	COMPEL DISCOVERY
)	

Duke Energy Carolinas, LLC (“DEC” or the “Company”), through counsel and pursuant to the North Carolina Utilities Commission’s (“Commission”) October 29, 2019 *Order Establishing General Rate Case, Suspending Rates, Scheduling Hearings, and Requiring Public Notice* (“Suspension Order”) in this docket, respectfully submits the following opposition and response to the Motion to Compel filed by Vote Solar on November 6, 2019.

I. BACKGROUND

DEC filed its rate case application and supporting testimony (and other supporting documents) (“Application”) with the Commission in this proceeding on September 30, 2019. The words climate change or global warming do not appear in DEC’s Application. Instead, the Application describes the various aspects of its proposed rate changes, requests for accounting orders, and the proximate reasons driving those changes to its rates, revenues, and costs structures. Specifically, DEC’s Application and supporting testimony identified several impacts from weather on its operations which manifested themselves in the storm cost recovery testimony of DEC witness Jackson and in several of the Grid Improvement Plan (“GIP”) proposals set forth in the testimony of DEC witness Oliver. These matters were set forth in the testimony of these DEC

witnesses because they relate directly to cost recovery and/or deferral proposals described in the Application.

On September 30, 2019 Vote Solar filed its petition to intervene in this proceeding and that intervention was allowed by Commission order dated October 3, 2019.

On October 29, 2019, the Commission issued its Suspension Order declaring this docket to be a general rate case. In its Suspension Order, the Commission summarized DEC's application and prescribed procedures for discovery in this case, including the requirement that "[f]ormal discovery requests related to the general rate case application and the Company's pre-filed direct and supplemental testimony shall be served on the Company . . . no later than 14 calendar days prior to the filing of Public Staff and other intervenor testimony." (emphasis added). No portion of the Commission's summary mentions global warming or climate change as an issue set for hearing in this proceeding.

On October 11, 2019, Vote Solar served its First Set of Interrogatories and Data Requests ("First Discovery Requests") on DEC consisting of 20 separately numbered requests consisting of more than 125 separate questions counting parts and subparts.¹

On October 21, 2019, DEC filed its responses to Vote Solar's First Discovery requests in which it answered several questions and objected to the remaining questions. DEC's objections were primarily focused on questions designed to elicit information regarding Duke Energy Corporation's 2017 Climate Report to Shareholders, climate related aspects of Duke Energy Corporation's 2018 SEC Form 10-K Report, and a Duke Energy Corporation Climate Disclosure Project report which constituted the bulk of Vote Solar's First Discovery Request. DEC's objections were based upon the notion that this case is not a referendum on global warming/climate

¹ Vote Solar also served a second set of discovery requests on DEC on October 25, 2019, consisting of 15 questions (including parts and subparts) relating to return on equity. DEC responded to those questions on November 4, 2019.

change and that DEC's corporate parent's treatment of and analysis regarding global warming/climate change, as reflected in the documents mentioned above, had no relevance to the cost recovery and deferral proposals reflected in DEC's application.²

Following DEC's objections to Vote Solar's First Discovery Requests, Vote Solar filed a letter with the Commission voluntarily withdrawing its First Discovery Requests but indicating that it would submit Supplemental requests at a later date. Vote Solar submitted such requests on October 25, 2019 ("Supplemental Discovery Requests"), and DEC again objected to questions seeking information related to the formulation of and analysis regarding global warming/climate change set forth in the three Duke Energy Corporation reports mentioned above.

On November 5, 2019, Vote Solar filed a Motion to Compel responses to its Supplemental Discovery Request consisting of 23 pages and 9 exhibits (totaling more than 600 pages). The exhibits included: (a) Duke Energy Corporation 2017 Climate report to Shareholders; (b) Duke Energy Corporation 2018 Form 10-K; (c) Duke Energy Corporation 2018 Climate Disclosure Project Submission; (d) US Department of Energy July 2013 Report on US Energy Sector Vulnerabilities to Climate Change and Extreme Weather; (e) Office of Energy Policy and Systems Analysis May 2016 Review of Climate Change Vulnerability Assessments: Current Practices and Lessons Learned from DOE's Partnership for Energy Sector Climate Resilience; (f) September 2016 Blackrock Investment Institute report Adapting Portfolios to Climate Change; (g) Climate Risk in the US Electric Utility Sector; (h) Climate related Disclosures in Oil and Gas, Mining, and Utilities; and (i) DEC responses to Vote Solar Supplemental DR-1. These reports all relate to a

² In its Motion to Compel, Vote Solar candidly acknowledges that "DR Set 1 was calculated to obtain a comprehensive view of how Duke Energy Corporation and the Company have studied, analyzed, and characterized its (sic) climate risks to the public, including (i) a 2017 Climate report to Shareholders; (ii) the most recently filed SEC Form 10-K; and (iii) a 2018 submission by Duke Energy Corporation to the Climate Disclosure project."

policy level analysis of global warming and climate change; they speak for themselves; and none address the matters set forth in DEC's Application in this proceeding.

II. ARGUMENT

The scope of permissible discovery under North Carolina law is broad but not unlimited. And while North Carolina Rule of Civil Procedure 26(b)(1) provides that "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matters involved in the pending action" the rule also provides limits on discovery where it is not reasonably calculated to lead to the discovery of admissible evidence, is overbroad, or unduly burdensome, which is the case with regard to the questions in Vote Solar's Supplemental Data Request to which DEC has objected. "[T]he scope of discovery is not unlimited; discovery is still limited by the outer bounds of relevance and burdensomeness." E.E.O.C. v. Altec Industries, Inc., 2012 WL 2295621 (W.D.N.C. 2012). *See also* In the Matter of Application of Bald Head Island Transportation, Inc. for Clarification of Tariff Language Defining Applicability of Class IX Excess Baggage Fare, Docket No. A-41, Sub 9 (March 22, 2012).

Irrespective of the rules governing discovery in North Carolina, the Vote Solar Motion to Compel raises a fundamental question as to what is the proper scope of this rate case proceeding and whether this already lengthy proceeding will be turned into a policy debate on global warming and climate change. DEC's perspective on this question is that the proper scope of this proceeding (including discovery) is limited to the costs, revenues, rates, and regulatory mechanisms reflected in its Application and that it would be jurisdictionally problematic, improper, and procedurally disastrous to expand the scope of this docket to include a broad-based examination of global warming and climate change.

This Commission has no particular charge to assume a policy making role with respect to global warming and climate change and its specific responsibility in this case is to determine whether the Company's rate, revenue, and regulatory proposals are just and reasonable and consistent with the public interest. In DEC's view, the Commission should decline the invitation offered by Vote Solar's Motion to Compel to dramatically expand the scope of this proceeding to encompass Duke Energy Corporation policy analysis and evaluation of global warming and climate change.

Turning to the specifics of Vote Solar's Motion to Compel, that motion is premised on the notion that the knowledge, analysis, and understanding of Duke Energy Corporation and its Board of Directors and Officers relative to climate change and global warming are relevant to the prudence of DEC's Grid Improvement Plan ("GIP") proposals in this proceeding. DEC disagrees. DEC would agree that weather volatility can and does impact its system and is perfectly willing to answer questions about the proximate causes for and rationale behind its specific weather-related GIP proposals and its storm cost recovery practices and expense.³ In fact, DEC witness Jay Oliver spends a substantial amount of time in his testimony and exhibits explaining the Megatrends that are driving DEC's GIP proposals, several of which are weather related. Similarly, DEC witness Jackson provides a detailed description of DEC's storm cost recovery plans and results in his direct testimony and exhibits. Notably, and fatal to their Motion to Compel, Vote Solar has not asked DEC any questions with respect to these matters and, instead, has focused on Duke Energy Corporation's global warming policy and climate change analysis claiming that its oblique and obscure questions about these topics will somehow help them frame questions regarding the Company's GIP plan. This notion is belied

³ To date, questions on these subjects have not been asked by Vote Solar.

by common sense. For example, if Vote Solar wants to ask the Company whether or how it considered climate change or global warming in developing the GIP plan it should simply ask that question and the Company will answer it. Requests for admission as to whether the Duke Energy Corporation Board of Directors approved certain portions of the 2017 Climate Change Report to Shareholders will never help frame simple and direct questions that Vote Solar is perfectly capable of asking regarding the GIP plan if that is their actual motive.

The question of whether DEC's GIP proposals and storm costs procedures are reasonably formulated to meet weather related challenges is a much different and much narrower question than the basis, analysis, and understanding underlying Duke Energy Corporation's evaluation of climate change and global warming. The former is a proper subject of discovery in this case. The latter is not.⁴ Even a cursory review of the questions to which DEC has objected in Vote Solar's Supplemental Discovery Request, as well as Vote Solar's Motion to Compel, reveals that it is seeking the opportunity to second guess and take issue with the holding company's strategy and analysis regarding global warming and climate change rather than exploring the specific justification for measures included in DEC's Application in this case.

For example, in Vote Solar Supplemental DR-1, parts (c), (d), (e), and (f), Vote Solar is asking DEC to affirm or deny Board or management positions relative to the 2018 Duke Energy Corporation 2018 Form 10-K, the Duke Energy Corporation 2017 Climate report, and the Duke Energy Corporation Climate Disclosure Project submission. None of these documents, and none of the requested affirmations or denials, have anything to do with either

⁴ Vote Solar also argues that investor knowledge of business risks associated with global warming and climate change are an important aspect of DEC's business environment and justify its requests. In this regard, DEC would note that Vote Solar asked extensive questions regarding these matters in its other discovery requests to DEC related to return on equity, which the Company answered.

storm cost planning/recovery or DEC's GIP proposals in the pending rate case. Instead, they are all aimed at disclosing information relative to policy evaluations by DEC's parent corporation regarding global warming and climate change and concern public documents (which Vote Solar obviously has access to) that speak for themselves.

In Vote Solar's Supplemental DR-2, Vote Solar is again seeking information regarding the background of Duke Energy Corporation's 2017 Climate Report to Shareholders and asset level vulnerability assessments. Even assuming that a common understanding could be reached as to what Vote Solar means by an asset level vulnerability assessment, the obvious purpose of this question is to seek enterprise level information regarding Duke Energy Corporation's global warming/climate change analysis, not the specific rationale underlying any GIP program initiative.

In Vote Solar's Supplemental DR-4, it seeks information regarding the contents and underlying analysis for Duke Energy Corporation's Climate Disclosure Project submission. Again, this submission is not at issue in this proceeding and has no relevance to any actual issue raised in DEC's application, therefore, Vote Solar's question are improper and not calculated to lead to the discovery of admissible evidence.

Finally, Vote Solar's Motion to Compel provides definitive evidence of its intent in this proceeding in the multiple policy level studies and reports on global warming and climate change attached to that motion. If its discovery request sought explanations for DEC's rationale in proposing specific GIP programs or storm recovery practices, none of those studies and reports would be relevant or necessary to its Motion to Compel. They only become relevant if the intent of Vote Solar is to pursue a broader based policy debate regarding global warming and climate change.

As is noted above, Vote Solar's questions are not related to the proposals of DEC in its Application in this proceeding but instead seek to obtain information and inject issues about the global warming and climate change analysis and strategies of Duke Energy Corporation into this docket. Vote Solar's actions in this regard are presumably designed to serve Vote Solar's own agenda in this regard and are not related to the much more limited inquiry that is properly pursued in this proceeding. If the Commission allows the line of inquiry sought by Vote Solar in its Motion to Compel, it would threaten to convert this case into a referendum on global warming and climate change. Instead, consistent with N.C. Gen. Stat. § 62-133 and the Commission's own Suspension Order, discovery in this case should be reasonably limited to the issues raised in DEC's application. Vote Solar's discovery requests go well beyond such limits and its Motion to Compel should be denied.

CONCLUSION

For the foregoing reasons, Duke Energy Carolinas, LLC respectfully requests that the Commission deny Vote Solar's Motion to Compel in this proceeding.

Respectfully submitted, this the 7th day of November, 2019.

/s/James H. Jeffries IV

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Duke Energy Carolinas, LLC's Response in Opposition to Vote Solar's Motion to Compel filed in Docket No. E-7, Sub 1214, was served electronically or via U.S. mail, first-class postage prepaid, upon all parties of record.

This the 7th day of November, 2019.

/s/Sloane O'Hare
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