

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1268  
DOCKET NO. E-7, SUB 1245

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Protest Related to Informational Filing by	)	ORDER SCHEDULING ORAL
Duke Energy Carolinas, LLC, and Duke	)	ARGUMENT AND REQUIRING
Energy Progress, LLC	)	RESPONSE BY PUBLIC STAFF

BY THE CHAIR: On December 11, 2020, Duke Energy Progress, LLC (DEP), and Duke Energy Carolinas, LLC (DEC; together, the Companies), filed a Joint Informational Filing in DEP's and DEC's company folders (Informational Filing) regarding their plans for membership and participation in the proposed Southeast Energy Exchange Market (SEEM). Among other things, the Companies state that their participation in SEEM will allow them to engage in the same type of bilateral arrangements for buying and selling excess power in which they are currently engaged, but far more efficiently. The Companies state that no Commission action is required in relation to the Informational Filing. The Companies further state that informational notice is not required by Regulatory Condition 3.1 of the Amended Regulatory Conditions issued on August 24, 2018, in Docket Nos. E-2, Sub 1095A, E-7, Sub 1100A, and G-9, Sub 682A (Regulatory Conditions) because DEC and DEP will not and cannot enter into transactions with each other under the SEEM Platform Agreement (Platform Agreement). The Companies also state that approval of the Platform Agreement is not subject to Commission preapproval under N.C. Gen. Stat. § 62-153(b). Based on this assessment, the Companies state their intention to file the Platform Agreement with the Federal Energy Regulatory Commission (FERC) on December 28, 2020.

On December 17, 2020, the Sierra Club, Southern Alliance for Clean Energy (SACE), and North Carolina Sustainable Energy Association (NCSEA; together, Protestants) filed a Joint Protest in which they contend that the Companies should have filed their Informational Filing under the advance notice provision provided in the Regulatory Conditions (Joint Protest). Protestants further object to the Companies' characterization of N.C.G.S. § 62-153 as not applying to the SEEM Platform Agreement. Protestants state that, on its face, N.C.G.S. § 62-153(a) requires public utilities to file copies of affiliate contracts with the Commission, without excepting contracts that do not envision transactions between the affiliates. Protestants also object to the Companies' interpretation of the Companies' obligations under Regulatory Condition 3.1. Finally, Protestants state that pursuant to Regulatory Condition 3.9(b), Commission approval is required before the Companies enter into any agreement that commits them to or involves them in "joint planning, coordination, dispatch or operation of generation, transmission, or distribution facilities with each other . . . ." Protestants request that the Commission make determinations of the Companies' obligations under the Regulatory Conditions and under N.C.G.S. § 62-153 and that the Commission both retain jurisdiction over the matter and ensure that the Companies do not enter into any agreements with respect to SEEM without explicit Commission approval.

Upon the filing of the Joint Protest, the Commission transferred the Informational Filing from the company folders into the above-captioned dockets.

On December 21, 2020, the Companies filed their Joint Response in Opposition to Protest. In addition to amplifying and clarifying points made in the Informational Filing, the Companies state that pursuant to Regulatory Condition 3.1(a), they provided the Public Staff with a copy of the Informational Filing 15 days prior to filing it with the Commission. The Companies also note that Protestants did not raise any legally cognizable grounds for the Commission to withhold approval of the SEEM Platform Agreement.

Based on the foregoing and the records in these dockets, the Chair finds good cause to issue this order requiring response by the Public Staff and scheduling oral argument for the limited purposes of receiving additional information for the Commission's consideration on the threshold issue raised by the Joint Protest, specifically whether the Commission's preapproval of the Platform Agreement is required pursuant to either N.C.G.S. § 62-153 or the Regulatory Conditions before the Platform Agreement is filed with the FERC.

IT IS, THEREFORE, ORDERED as follows:

1. That the Public Staff shall file a response to the Joint Protest on or before January 6, 2021;
2. That DEP and DEC shall not file the SEEM Platform Agreement with the FERC until further order of the Commission; and
3. That the matter shall be set for oral argument before the Commission on January 13, 2021, at 2:00 p.m., in order to address the sole issue of whether the Commission's preapproval of the Platform Agreement is required pursuant to either N.C.G.S. § 62-153 or the Regulatory Conditions before the Platform Agreement is filed with the FERC. The oral argument shall be conducted remotely via Webex. On or before January 6, 2021, all parties shall (a) file a statement consenting to hold the oral argument by remote means, or a statement objecting to the same, and (b) send the name, phone number, and email address of each attorney that will participate in the oral argument on the party's behalf directly to the Commission via email at [ncucwebex@ncuc.net](mailto:ncucwebex@ncuc.net).

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of December, 2020.

NORTH CAROLINA UTILITIES COMMISSION



Janice H. Fulmore, Deputy Clerk