

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1213
DOCKET NO. E-7, SUB 1214
DOCKET NO. E-7, SUB 1187

DOCKET NO. E-7, SUB 1213)
)
 In the Matter of)
Petition of Duke Energy Carolinas, LLC, for)
Approval of Prepaid Advantage Program)
)
DOCKET NO. E-7, SUB 1214)
)
 In the Matter of)
Application by Duke Energy Carolinas, LLC, for)
Adjustment of Rates and Charges Applicable to)
Electric Utility Service in)
North Carolina)
)
DOCKET NO. E-7, SUB 1187)
)
 In the Matter of)
Application of Duke Energy Carolinas, LLC for)
an Accounting Order to Defer Incremental)
Storm Damage Expenses Incurred as a Result)
of Hurricanes Florence and Michael and Winter)
Storm Diego)

ORDER DENYING ATTORNEY
GENERAL'S MOTION TO FILE
LATE-FILED EXHIBIT AND
SUPPLEMENTAL AUTHORITIES

BY THE CHAIR: On November 20, 2020, the Attorney General's Office (AGO), filed a Motion to File Late-Filed Exhibit and Supplemental Authorities in the above-captioned dockets. In summary, the AGO requested that the Commission accept into evidence as a late-filed exhibit a transcript from a November 5, 2020, Duke Energy Corporation (Duke Energy), earnings call regarding Q3 2020. According to the AGO, the earnings call included Duke Energy senior executives responding to questions from financial analysts about the potential outcome of the Duke Energy Carolinas, LLC (DEC), general rate case application in Docket No. E-7, Sub 1214, and the Duke Energy Progress, LLC (DEP), general rate case application in Docket No. E-2, Sub 1219, as well as future plans for funding coal ash remediation costs with debt. The AGO stated that the transcript was not available at the time of the expert witness hearings in the DEC and DEP rate cases.

In addition, the AGO requested that the Commission accept as supplemental authorities two cases it contends relate to DEC's constitutional takings argument, *Duquesne Light Co. v. Barasch*, 486 U.S. 299, 102 L.Ed.2d 646 (1989) (*Duquesne*), and *State ex rel. Utilities Comm. v. Thornburg*, 325 N.C. 463, 466, 385 S.E.2d 451, 452 (1989) (*Thornburg*). The AGO argued that these two cases were "[n]oticeably missing" from DEC's Post-Hearing Brief.

On November 23, 2020, DEP and DEC (Companies), filed a joint response to the AGO's motion. In summary, the Companies noted that the DEC rate case hearing ended on September 18, 2020, and that the DEP rate case hearing ended on October 6, 2020, more than two months and six weeks, respectively, before the AGO filed its motion. The Companies contended that the completion of these hearings brought to a close the evidence introduced and to be considered by the Commission, with the exception of several late-filed exhibits specifically requested by the Commission. The Companies further argued that the earnings call transcript is a document that did not exist at the time of the rate case hearings, that the Commission has not sought introduction of the transcript, and that the transcript cannot be placed into full and proper context because the rate case hearings have concluded.

In response to the AGO's request that the Commission accept and consider *Duquesne* and *Thornburg* as supplemental authorities, the Companies contended that the authorities are not relevant, in that they relate to "takings" arguments in a different context than that of the DEC and DEP rate cases. The Companies also asserted that the briefing in the DEC rate case was completed on November 4, 2020, and that the AGO's motion is an improper attempt to file a reply brief.

Based on the foregoing and the record, the Chair concludes that the AGO's motion should be denied. With respect to the transcript of the Duke Energy earnings call on November 5, 2020, the Commission agrees with the Companies that the transcript is an exhibit the Commission has not sought, and that there will not be an opportunity in the DEC rate case for parties to cross-examine the speakers or file a response to the transcript.

In addition, the Chair is not persuaded that there is good cause to support the AGO's motion to supplement the record with *Duquesne* and *Thornburg* in the DEC rate case. Generally, the guidelines allowing the filing of supplemental authorities require that the movant did not discover the authorities until after filing its brief. See North Carolina Rules of Appellate Procedure, Rule 28(g). Both *Duquesne* and *Thornburg* are 1989 decisions. The AGO made no representation in its motion that prior to filing its Post-Hearing Brief it was unaware of *Duquesne* and *Thornburg*. Finally, the Commission

has been aware of the *Duquesne* and *Thornburg* decisions for some time, and will give them due consideration.

IT IS, THEREFORE, ORDERED that the AGO's motion to file a late-filed exhibit and supplemental authorities shall be, and is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of December, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Kimberley A. Campbell". The signature is written in a cursive style with a large initial 'K'.

Kimberley A. Campbell, Chief Clerk