

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1219
DOCKET NO. E-7, SUB 1213
DOCKET NO. E-7, SUB 1214

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1219)	
)	
In the Matter of)	
Application by Duke Energy Progress, LLC,)	
for Adjustment of Rates and Charges)	
Applicable to Electric Utility Service in)	ORDER PROPOSING
North Carolina)	PROCEDURES FOR PARTIALLY
)	CONSOLIDATED EXPERT
DOCKET NO. E-7, SUB 1213)	WITNESS HEARING,
)	SCHEDULING PRE-HEARING
In the Matter of)	CONFERENCE
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)	

On August 2, 2019, Duke Energy Carolinas, LLC (DEC), filed a Petition for Approval of Prepaid Advantage Program in Docket No. E-7, Sub 1213, pursuant to which DEC would offer customers the billing option to prepay for service, thereby avoiding the need for a deposit, reconnect fees or late fees.

On September 30, 2019, DEC filed an application with the Commission in Docket No. E-7, Sub 1214 requesting authority to adjust and increase its rates for retail electric service in North Carolina. On October 29, 2019, the Commission issued an Order Establishing General Rate Case, Suspending Rates, Scheduling Hearings, and Requiring Public Notice.

On October 30, 2019, Duke Energy Progress, LLC (DEP), filed an application with the Commission in Docket No. E-2, Sub 1219 requesting authority to adjust and increase its rates and charges for retail electric service in North Carolina. On November 14, 2019, the Commission issued an Order Establishing General Rate Case and Suspending Rates, and on December 26, 2019, the Commission issued an Order Scheduling Investigation

and Hearings, Establishing Intervention and Testimony Due Dates and Discovery Guidelines, and Requiring Public Notice.

On November 20, 2019, the Commission issued an Order Consolidating Dockets in Docket No. E-7, Subs 1213 and 1214 concluding that the rate case is the proper forum to discuss the proposed Prepaid Advantage Program and consolidating DEC's request for approval of its Prepaid Advantage Program with DEC's general rate case application.

On March 10, 2020, Governor Roy Cooper issued Executive Order No. 116 declaring a State of Emergency in North Carolina to coordinate response and protective actions to prevent the spread of coronavirus (COVID-19). In so doing, the Governor ordered state agencies to cooperate in the implementation of the provisions of the Executive Order. By subsequent executive orders, the Governor restricted non-essential movement of the State's residents and, ultimately, prohibited mass gatherings of more than 10 persons to limit the spread of COVID-19.

On March 16, 2020, in response to the COVID-19 pandemic and the Governor's declared State of Emergency and upon motion of DEC, the Commission issued an Order Postponing Hearing and Addressing Procedural Matters in Docket No. E-7, Sub 1214. Pursuant to the October 29, 2019 order in that docket, the expert witness hearing had been scheduled to begin on March 23, 2020. In its motion, DEC waived its right to seek to implement its original proposed rates by operation of N.C. Gen. Stat. § 62-134(b) in the event that the postponement of the hearing renders it infeasible for the Commission to issue an order prior to expiration of the rate suspension period under N.C.G.S. § 62-134.

On March 24, 2020, in response to a request by the Public Staff for an extension of time to file testimony, the Commission issued an Order Suspending Procedural Schedule and Continuing Hearing in Docket No. E-2, Sub 1219 *sua sponte* suspending the procedural schedule and continuing the expert witness hearing scheduled to begin on May 4, 2020, due to the continuing uncertainty surrounding the COVID-19 pandemic. In a filing made on April 3, 2020, DEP, like DEC previously, waived its right to seek to implement its original proposed rates by operation of N.C.G.S. § 62-134(b) in the event that the postponement of the hearing renders it infeasible for the Commission to issue an order prior to expiration of the rate suspension period under N.C.G.S. § 62-134, subject to its right to implement temporary rates under N.C.G.S. § 62-135 and to seek appropriate accounting treatment relief.

JOINT MOTION TO CONSOLIDATE HEARINGS

On May 6, 2020, DEC, DEP, and the Public Staff (Movants) filed a Joint Motion to consolidate the expert witness hearings in these cases given the extraordinary circumstances surrounding the COVID-19 pandemic and the substantial similarity of the issues and overlap of the intervenors in both rate case dockets. The Movants specifically note that (1) there is substantial overlap between and among the parties that have intervened in these cases,¹ (2) a substantial majority of the Companies' direct and rebuttal

¹ The only intervenors in the DEC rate case not parties to the DEP rate case are the Tech Customers, the Center for Biological Diversity, and Appalachian Voices; the only intervenors in the DEP

witnesses, the Public Staff's witnesses, and the intervenors' witnesses are the same in both rate cases, (3) both rate cases contain substantially similar if not identical cost recovery issues, including the same requested return on equity and capital structure, cost of service study methodologies, excess deferred income tax recovery flowback periods, Grid Improvement Plan deferral, coal ash removal cost recovery, and storm cost recovery requests, among others, and (4) the Companies, the Public Staff, and the intervenors have taken substantially similar if not identical positions on these common issues in both rate cases. Movants request that the Commission consolidate the expert witness hearings in these cases so as to maximize their efficient handling and management.

The Movants propose a procedure for conducting the consolidated hearing that they suggest would provide for an orderly presentation of evidence and witnesses and achieve efficiencies where the issues are similar, but that would still allow for a clear record where issues pertain to only one Company. Given the Governor's timeline for easing COVID-19 restrictions, Movants suggest, health and safety permitting, that the Commission consider holding the consolidated hearing so that it commences and is completed in the July to early-August 2020 timeframe. Movants further represent that no party objects to either the general concept of consolidation or the proposed procedure for conducting the consolidated expert witness hearing.

Specifically, the Movants propose that the Companies' witnesses testify first. If the witness is the same for both companies, the witness would for the most part only take the stand once (the witness could be recalled for rebuttal testimony). Witnesses for the Companies on the same topic would appear together as a panel. The Companies would introduce all DEC testimony and exhibits into the record first, followed by the DEP testimony and exhibits. Intervenors on cross-examination of these witnesses, and then Commissioners, would be requested to ask questions that apply to both Companies first, followed by DEC-specific questions, followed by DEP-specific questions. A similar process would follow for intervenor witnesses. Following the hearing, briefs submitted could cover both Companies, and staggered dates would be established for the filing of separate proposed orders in the DEC and DEP proceedings. Lastly, Movants recommend that Commission staff and the parties have a pre-hearing conference to go over the above procedure.

DISCUSSION AND CONCLUSIONS

Given the current State of Emergency resulting from COVID-19 and the resultant delays in these pending rate cases, the Commission finds merit in consolidating the cases, in part, for hearing — particularly for the benefit of the witnesses who will be appearing to testify. The Commission has now gained some experience during the pandemic with holding remote meetings via WebEx, and it is not prepared to conduct the expert witness hearings in these cases remotely. Rather, the hearings will be conducted in person before the Commission, subject to appropriate social distancing and limitations on the number of persons in the hearing room, and counsel and all witnesses for the parties will be required to be physically present to participate in the hearing. Given the

rate case not parties to the DEC rate case are the Department of Defense/Federal Executive Agencies, Fayetteville Public Works Commission, and Hornwood, Inc.

current schedule for easing the COVID-19 restrictions, the Commission intends to schedule the hearings to commence as generally requested by the Movants on Monday, July 27, 2020. The hearings will proceed, as necessary, until all witnesses have presented their testimony in both the DEC and DEP proceedings. Commissioner Clodfelter has been designated to preside over the portions of the hearings specifically related to the DEP rate case, and Chair Mitchell will preside over the remainder of the hearings, including the portions of the hearings specifically related to the DEC rate case.

The Commission appreciates the efforts of the parties in developing the proposed procedure for conducting a consolidated hearing. The Commission is not persuaded that a wholly consolidated hearing will provide a clear and cogent record for deciding the issues in each case. The Commission, therefore, proposes adopting the following procedure, adapted and slightly modified from that proposed by the Movants. The Commission accepts the Movants suggestion that witnesses on the same topic, or issue, testify together and that such procedure will maximize the efficient use of the Commission's and parties' witnesses' time. The Commission proposes to identify with the help of the parties three subsets of issues in these proceedings: (1) issues where there is substantial duplication in the witnesses and testimony between the Companies' rate cases, (2) issues in common between the Companies' proceedings, but where the sub-issues and testimony is not substantially duplicative, and (3) issues that are unique to DEC or DEP, such as consideration of DEC's Prepaid Advantage Program.

Issues within the first category will be consolidated for purposes of the expert witness hearings. For these issues, there will be one record, and the same transcript will be entered into each docket. Examples of such issues include financial issues, such as the capital structure to be used to establish rates, the Companies' cost of debt and equity, and the treatment of excess deferred income taxes (EDIT). The Commission requests the assistance of the parties in identifying additional issues for which the testimony and evidence in separate DEC and DEP hearings would have been substantially duplicative. The Commission will hear these consolidated issues first and will then proceed to sequentially hear the remaining issues, issue by issue and witness by witness within each issue, creating a separate record (and transcript) for each of the DEC and DEP rate cases.

More specifically, the Commission proposes that the consolidated record begin with the introduction of the testimony and exhibits of Stephen G. De May, North Carolina President for DEC and DEP, who provides an overview of the cases. He will be allowed to present a summary of his prefiled testimony in its entirety at this time. Intervenors (including the Public Staff) will be allowed to cross-examination witness De May, followed by redirect examination by the Companies, Commission questions, and any questions on the Commission questions, but intervenor and Commission questions will be limited to only those issues to be considered during the consolidated portion of the record. The Commission proposes to then hear from additional witnesses for the Companies, then intervenors, on the consolidated issues, again with cross-examination, redirect examination, Commission questions, and any questions on the Commission questions limited to these issues. This portion of the record will be placed in each docket as the testimony would have been largely identical had the two rate cases proceeded separately on these issues.

Following testimony on the consolidated issues, the Commission proposes to hear from the parties on the remaining issues, taking breaks between testimony separately related to DEC and DEP on each issue. First, intervenors will be allowed to cross-examine witness De May, followed by redirect examination, Commission questions, and any questions on the Commission questions on any issues raised in his testimony that were not related to the consolidated issues. At the conclusion of witness De May's testimony, the hearings will continue with the testimony of additional Company and intervenor witnesses, first with the remaining issues in common between the two cases, and lastly on any issues specific to DEC or DEP. For each issue, DEC will present the direct testimony and exhibits of its witnesses followed by intervenor cross-examination, redirect examination, Commission questions, and any questions on the Commission questions. Following the Companies' witnesses on an issue, each intervenor witness on that issue will testify first regarding DEC and then DEP, again with breaks between the cases to separate the record (and transcripts) in the DEC and DEP proceedings. This procedure is intended to maximize the efficient use of each witness's time, particularly intervenor witnesses, allowing each to testify first regarding DEC, then DEP, and then to be dismissed. Recognizing that some witnesses testify regarding multiple issues, it is possible that some of these remaining issues may be better grouped to make even more efficient use of the witnesses' time, and the Commission will consider suggestions of the parties in this regard.

Thus, the Commission preliminarily concludes that the above-captioned dockets should be consolidated, in part, for hearing as proposed herein. The Commission agrees with the Movants that a pre-hearing conference would be useful and will schedule one to be held via WebEx soon after issuance of this order to hear from the parties on the proposed procedure. Invitations to participate in this pre-hearing conference will be emailed to counsel of record for each of the parties in these proceedings. The Companies will then be ordered to coordinate with the intervenors to identify and file with the Commission a matrix of issues, order of witnesses, and estimated times for cross-examination of each party for each of the three categories of issues proposed above.

IT IS, THEREFORE, ORDERED that a pre-hearing conference via WebEx shall be, and is hereby, scheduled for Friday, June 5, 2020, at 10:00 a.m. for parties to provide comments to the Commission on the procedure proposed herein to consolidate the cases, in part, for hearing in response to the May 6, 2020 Joint Motion.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of May, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in blue ink, appearing to read "Janice H. Fulmore", is written over a horizontal line.

Janice H. Fulmore, Deputy Clerk