
Kiran H. Mehta
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October 7, 2020

VIA ELECTRONIC FILING

Ms. Kimberley A. Campbell, Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

RE: Duke Energy Carolinas LLC's Motion Requesting That The Commission Take
Judicial Notice Of Certain Evidence Introduced In The DEP Specific Hearing
DOCKET NO. E-7, SUB 1213
DOCKET NO. E-7, SUB 1214
DOCKET NO. E-7, SUB 1187

Dear Ms. Campbell:

Enclosed for electronic filing is Duke Energy Carolinas LLC's *Motion Requesting That The Commission Take Judicial Notice Of Certain Evidence Introduced In The DEP Specific Hearing*.

Please do not hesitate to contact me should you have any questions. Thank you for your assistance in this matter.

Sincerely,

/s/ Kiran H. Mehta

Kiran H. Mehta

Enclosure

cc: Parties of Record

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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)
 Application for Approval of Proposed)
 Prepaid Advantage Program)
)
 DOCKET NO. E-7, SUB 1214)
)
 In the Matter of)
 Application of 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)

**DUKE ENERGY CAROLINAS,
LLC MOTION REQUESTING
THAT THE COMMISSION TAKE
JUDICIAL NOTICE OF CERTAIN
EVIDENCE INTRODUCED IN
THE DEP-SPECIFIC HEARING**

NOW COMES Duke Energy Carolinas, LLC (DEC or Company), by and through its legal counsel and pursuant to Rules R1-7 and R1-24 of the Rules and Regulations of the North Carolina Utilities Commission (Commission), and respectfully moves that the Commission take judicial notice of certain evidence introduced during the Duke Energy Progress, LLC (DEP) expert testimony hearing in Docket No. E-2, Sub 1219 (DEP Hearing).

The specific evidence that is the subject of this Motion is the live testimony provided on October 6, 2020 by DEP witnesses James Wells and Marcia Williams (testifying as a panel) on questions in response to Commission questions, along with Williams Rebuttal Exhibit 2, which was referenced during that testimony.¹ This evidence is generally applicable to both the DEC and DEP Dockets, and DEC seeks, by this Motion, to have the Commission take judicial notice of that testimony and Williams Rebuttal Exhibit 2, such that this evidence may be used in connection with post-hearing briefing and the submission of proposed Orders, and may also be relied upon by the Commission in connection with its decision and in any Orders it may issue in the DEC rate case and consolidated dockets.

Counsel for DEC has consulted with counsel for the Public Staff, the Attorney General's Office (AGO), and Sierra Club regarding this request for judicial notice as to specific evidence. Counsel for the Public Staff and Sierra Club have indicated that they have no objection to the request, and as of the filing of this Motion counsel for DEC has not heard from counsel for the AGO.

More broadly, however, the Company also seeks guidance from the Commission as to whether the Commission will generally allow judicial notice of evidence from the DEP Hearing, and, if so, how the parties should request it.² As evidenced by the stipulation process employed by the parties in the DEP Hearing,

¹ The transcript of proceedings for October 6, 2020 is not as yet available. The testimony in question begins at approximately the 12-minute mark on the Commission's YouTube video feed and continuing to approximately the 29-minute mark on that feed.

² For example, must the judicial notice request be made in advance of its use? Could the request be simply made in a party's brief or proposed Order, subject to later objection lodged by an adverse party in the event that adverse party deems judicial notice to be inappropriate under the particular circumstances of the request?

there is a tremendous amount of overlap between the issues and evidence in the two expert evidentiary proceedings. The parties to the DEP Docket, E-2, Sub 1219, solved this problem by entering into stipulations regarding evidence introduced in the DEC Docket, E-7, Sub 1214. However, the Record in the DEC Docket is now closed apart from any late-filed exhibits requested by the Commission, so the stipulation route may also be foreclosed.

However, it appears that taking judicial notice of evidence introduced in the DEP Hearing would be a mechanism to address this issue. Indeed, the Commission has already repeatedly employed the judicial notice mechanism in this Docket to bring into this Docket evidence introduced in other Dockets. For example, in its Order Establishing General Rate Case, Suspending Rates, Scheduling Hearings & Requiring Public Notice (October 29, 2019) and pursuant to N.C. Gen. Stat. § 62-65(b), the Commission took judicial notice of “all evidence, decisions and other matters of record pertaining to coal combustion residuals (CCRs), Advanced Metering Infrastructure (AMI), and Power Forward in DEC’s last general rate case, Docket No. E-7, Sub 1146.” Id. at p. 3. Further, in the course of the DEC-specific hearings, the Commission, without exception and upon request, took judicial notice of evidence introduced in other proceedings.³ In each instance, by way of the evidentiary stipulations worked out by the parties in the

³ See, e.g., DEC Tr. Vol. 13, p. 84, line 14 through p. 85, line 1 (at request of DEC, Commission took judicial notice of testimony of Public Staff witness Jack Floyd filed on September 24, 2012 in Docket No. E-22, Sub 479); DEC Tr. Vol. 19, p. 17, line 20 through p. 18, line 3 (at request of Commercial Group, Commission took judicial notice of the direct testimony of Public Staff witness Jack Floyd filed on January 23, 2018, in Docket No. E-7, Sub 1146); DEC Tr. Vol. 21, p. 92, line 21 through p. 93, line 5.) (at request of Public Staff, Commission took judicial notice of the direct testimony and exhibits of Jay B. Lucas filed August 23, 2019 in Docket No. E-22, Sub 562.

DEP Hearing, the same evidence also was introduced into the Record in the DEP Hearing through judicial notice.

WHEREFORE, the Company requests that:

1. The Commission take judicial notice of the testimony presented in response to questions on Commission questions by witnesses Wells and Williams (testifying as a Panel) during the proceedings in the DEP Hearing on October 6, 2020, along with Williams Rebuttal Exhibit 2 referenced during that testimony.

2. The Commission provide guidance as to whether it will take judicial notice in this Docket of evidence submitted in the DEP Hearing, such that generally applicable testimony and exhibits from that Hearing may be referenced and used in connection with post-hearing briefing and the submission of proposed Orders, and may also be relied upon by the Commission in connection with its decision and in any Orders it may issue in the DEC rate case and consolidated dockets. If the Commission is amenable to this, DEC further seeks guidance as to how a party should go about requesting such notice.

Respectfully submitted, this the 7th day of October 2020.

DUKE ENERGY CAROLINAS, LLC

/s/ Kiran H. Mehta

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CERTIFICATE OF SERVICE

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

I hereby certify that a copy of the foregoing **DUKE ENERGY CAROLINAS, LLC'S MOTION REQUESTING THAT THE COMMISSION TAKE JUDICIAL NOTICE OF CERTAIN EVIDENCE INTRODUCED IN THE DEP SPECIFIC HEARING** was served electronically or by depositing a copy in United States Mail, first class postage prepaid, properly addressed to the parties of record.

This the 7th day of October 2020.

/s/ Kiran H. Mehta
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