

5 KEY TAKEAWAYS

Timely Update on North Carolina Energy Regulatory & Legislative Issues

Appalachian State University recently held its annual Energy Law CLE in Boone, North Carolina. [Kilpatrick Townsend](#) attorneys led the day-long energy law continuing legal education event for colleagues in the industry, clients, and regulators on the latest developments in energy matters in North Carolina and beyond.

[Ben Smith's](#) two sessions: "NC Energy Regulatory/Legislative Update: Timely discussions on the status of the Carbon Plan Integrated Resource Plan, rate cases, avoided costs, and other significant energy policy topics" and "Top of the Docket, North Carolina Utility Commissioners' Q&A" covered critical issues in the energy regulatory environment in North Carolina.

The Key Takeaways from these two sessions include:

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Duke Energy's 2023 Carbon Plan and Integrated Resource Plan provides the Duke Energy utilities' proposal to meet North Carolina's carbon reduction requirements. Following the passage of House Bill 951 in 2021, the North Carolina Utilities Commission is required to implement plans for the Duke Energy utilities in North Carolina to reduce carbon emissions by 70% in its energy generation resources by 2030 and carbon neutrality by 2050. The Commission requires the Duke Energy utilities to file a proposed plan for its generation resources, including a plan to reduce carbon emissions. The Duke Energy proposal includes a number of portfolios reflecting different possibilities for the energy generation transition, but the utilities signaled a preference for Portfolio #3 which proposes a heavy buildout of new natural gas, new nuclear resources, and hydrogen upfitting of natural gas turbines.

Intervenors are initially skeptical that Duke Energy's proposals meet the requirements of House Bill 951. House Bill 951 broadly requires the North Carolina Utilities Commission implement a plan to reduce the carbon emissions in least-cost manner while maintaining or improving reliability. Duke Energy's preference to invest capital into new carbon-emitting natural gas turbines and long-lead plans to invest heavily into new small modular reactor nuclear facilities and hydrogen upfitting of natural gas turbines, neither of which have been utilized in the market at the scale proposed by Duke Energy, has led some intervenors to question whether the preferred proposal will meet the carbon emissions requirements. While intervenors to the docket have not yet filed responsive testimony, initial returns during stakeholder discussions indicate some intervenors are skeptical that Duke Energy can meet the challenge of reducing emissions while maintaining or improving reliability and doing so in the least-cost manner.

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Many intervenors would prefer a generation portfolio plan that includes higher amounts of solar, energy storage, and wind energy development. Duke Energy's proposal includes significant solar installations, but the assumption of the buildout may be by shortcomings in the procurement process which includes significant lag and risk assumption by third-party developers. Developing offshore wind and standalone energy storage may provide the carbon-free resources needed to meet the requirements of House Bill 951 without the same level of development risk associated with nascent in utility-scale hydrogen and modular nuclear technologies.

North Carolina Utilities Commissioners seek concise legal writing. Commissioners who presented at the Energy Law CLE were clear that intervenors would benefit from being concise in their writing, particularly with regard to their relief sought. Commissioners at the conference commented that too often they are forced to piece together what an intervenor is asking for in a filing or testimony.

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Commissioners also emphasized that intervenors should establish proper foundation when bringing new evidence in front of the Commission. The attending Commissioners, recognizing the quasi-judicial nature of the state utilities commission, stated that attorneys for intervenors should strive to meet the same evidentiary foundational standards as those used in trial court. Similarly, the Commission prefers that intervenors make efficient work of cross examination and prepare for expert witness hearings in a manner that allow the hearings to progress in an efficient and effective manner.

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