

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 EHR 02398, 19 EHR 02399, 19 EHR 02401,
19 EHR 02403, 19 EHR 02404, 19 EHR 02406

<p>Duke Energy Carolinas LLC, and Duke Energy Progress LLC, Petitioners,</p> <p>v.</p> <p>State of North Carolina ex rel. North Carolina Department of Environmental Quality, Respondent.</p> <p>and</p> <p>Appalachian Voices, The Stokes County Branch of the NAACP, Mountaintrue, The Catawba Riverkeeper Foundation, The Sierra Waterkeeper Alliance, The Sierra Club, and The Roanoke River Basin Association, Respondent-Intervenors.</p>	<p>FINAL DECISION GRANTING RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT</p>
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THIS CAUSE coming on to be heard on October 23, 2019 before the Undersigned Administrative Law Judge on the Respondent's Motion for Partial Summary Judgment.

The Parties have filed the following papers concerning this motion: Petitioners' Memorandum in Opposition to Respondent's Motion for Partial Summary Judgment; Respondent-Intervenors' Response in Support of DEQ's Motion for Partial Summary Judgment; Amicus Curiae CIGFUR's Brief in Opposition to Respondent's Motion for Partial Summary Judgment; Duke's Reply to Intervenor's "Response" in Support of DEQ's Motion for Partial Summary Judgment; and Respondent's Reply in Support of Respondent's Motion for Partial Summary Judgment. The Undersigned has reviewed these motion papers, exhibits referenced, legal arguments made and citations referenced.

After careful consideration, and it appearing to the Undersigned that there is no genuine issue as to any material fact, the Respondent is entitled to Partial Summary Judgment as a matter of law on the following claims:

That DEQ erred by failing to provide adequate notice and depriving Duke Energy of a meaningful opportunity to be heard prior to DEQ's closure election decision.

And

That DEQ erred in directing Duke Energy to submit only one closure plan per impoundment.

Further, because Petitioner had notice and a meaningful opportunity to be heard, the evidentiary record is generally limited to information before the agency on April 1, 2019.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Motion for Partial Summary Judgment is granted in favor of Respondent.

Partial Summary Judgment hereby is entered for Respondent.

This decision is made under the authority of §G.S. 150B-34(e).

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 28th day of October, 2019.



Selina Malherbe
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 28th day of October, 2019.



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