

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
19 EHR 05250

<p>Duke Engery Carolina LLC and Duke Energy Progress LLC Petitioner,</p> <p>v.</p> <p>State of North Carolina ex rel North Carolina Department of Environmental Quality Respondent.</p>	<p style="text-align: center;"><b>FINAL DECISION ORDER OF DISMISSAL</b></p>
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THIS MATTER comes on for consideration of Respondent's Motion to Dismiss. Petitioners have filed a Response and Respondent has filed a Reply. The Undersigned has carefully considered the Parties' moving papers, legal arguments made and citations therein.

THEREFORE, the Undersigned hereby determines that the Office of Administrative Hearings lacks subject matter jurisdiction in this case because of lack of subject matter jurisdiction on the ground that Petitioners' claims are unripe for review. Therefore, the Respondent's Motion to Dismiss shall be GRANTED.

**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 15th day of November, 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 15th day of November, 2019.



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STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

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ADMINISTRATIVE HEARINGS  
19 EHR 05250

DUKE ENERGY CAROLINAS, LLC, and  
DUKE ENERGY PROGRESS, LLC,

Petitioners,

v.

NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Respondent.

**RESPONDENT’S MOTION TO  
DISMISS**

NOW COMES Respondent, North Carolina Department of Environmental Quality (“DEQ”) by and through the undersigned counsel, pursuant to 26 NCAC 3 .0101 and Rule 12(b)(1) of the North Carolina Rules of Civil Procedure, and files this Motion to Dismiss. For the reasons set forth in this Motion and the accompanying memorandum in support filed contemporaneously herewith, DEQ moves to dismiss the Petition for Contested Case Hearing filed by Petitioners Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, “Duke Energy” or “Petitioners”) for lack of subject matter jurisdiction.

1. Duke Energy’s Petition challenges DEQ’s letter dated August 20, 2019, which declined to depart from the prior agreed-upon methodology for determining background values or “BTVs.”
2. The claims in Duke Energy’s Petition are unripe for this Court’s review.
3. As a result, this Court lacks subject matter jurisdiction and Duke Energy’s Petition should be dismissed.

WHEREFORE, Respondent DEQ respectfully requests that Duke Energy’s Petition be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

Respectfully submitted, this, the 23rd day of October, 2019.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document has been served on counsel for Petitioners in this action through the OAH electronic filing system at the electronic mailing addresses shown below:

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This the 23rd day of October, 2019.

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