

STATE OF NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO: 24-CV-003385-670

THE TOWN OF CARRBORO,
NORTH CAROLINA,

Plaintiff,

v.

DUKE ENERGY CORPORATION,

Defendant.

NOTICE
OF DESIGNATION

Pursuant to N.C.G.S. § 7A-45.4, Defendant Duke Energy Corporation seeks to designate the above-captioned action as a mandatory complex business case. In good faith and based on information reasonably available, Defendant, through counsel, hereby certifies that this action meets the criteria for:

 X Designation as a mandatory complex business case pursuant to N.C.G.S. § 7A-45.4(a), in that it involves a material issue related to:

- X (1) Disputes involving the law governing corporations, except charitable and religious organizations qualified under N.C.G.S. § 55A-1-40(4) on the grounds of religious purpose, partnerships, and limited liability companies, including disputes arising under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.
- _____ (2) Disputes involving securities, including disputes arising under Chapter 78A of the General Statutes.
- _____ (3) Disputes involving antitrust law, including disputes arising under Chapter 75 of the General Statutes that do not arise solely under N.C.G.S. § 75-1.1 or Article 2 of Chapter 75 of the General Statutes.
- _____ (4) Disputes involving trademark law, including disputes arising under Chapter 80 of the General Statutes.
- _____ (5) Disputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications,

information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies.

- _____ (8) Disputes involving trade secrets, including disputes arising under Article 24 of Chapter 66 of the General Statutes.
- _____ (9) Contract disputes in which all of the following conditions are met:
 - (a) At least one plaintiff and at least one defendant is a corporation, partnership, or limited liability company, including any entity authorized to transact business in North Carolina under Chapter 55, 55A, 55B, 57D, or 59 of the General Statutes.
 - (b) The complaint asserts a claim for breach of contract or seeks a declaration of rights, status, or other legal relations under a contract.
 - (c) The amount in controversy computed in accordance with N.C.G.S. § 7A-243 is at least one million dollars (\$1,000,000).
 - (d) All parties consent to the designation.

 X Designation as a mandatory complex business case pursuant to N.C.G.S. § 7A-45.4(b), in that it is an action:

- _____ (1) Involving a material issue related to tax law that has been the subject of a contested tax case for which judicial review is requested under N.C.G.S. § 105-241.16, or a civil action under N.C.G.S. § 105-241.17 containing a constitutional challenge to a tax statute.
- X (2) Described in subsection (1), (2), (3), (4), (5), or (8) of N.C.G.S. § 7A-45.4(a) in which the amount in controversy computed in accordance with N.C.G.S. § 7A-243 is at least five million dollars (\$5,000,000).

BASIS FOR DESIGNATION

Through this first-of-its-kind Complaint, Plaintiff the Town of Carrboro, North Carolina (“Carrboro” or “Plaintiff”) seeks to use its North Carolina corporate power conferred by N.C.G.S. § 160A-11 (“Corporate powers”) to regulate the emissions of utilities owned or operated by Defendant Duke Energy Corporation (“Duke Energy” or “Defendant”), both within North Carolina and across the country; to effect state and national energy policy and regulations; and to impose a form of taxation on Duke Energy to be paid by ratepayers.¹ *See, e.g.*, Compl. ¶¶ 10, 24–26, 61, 110–12, 131, 137–45, 153–58, 210, 218, 225, 236, 244–45, 249–50, 253, 259. The anomalous Complaint is required to be designated to the Business Court because it requests that the Court create a new municipal corporate power that has no basis in statutory or common law.

This is the first case in North Carolina where a municipality has sought to deploy its limited corporate powers to regulate and tax a utility based on global climate change via purported state tort law. This is likely because the State’s authority over energy policy is reserved by the North Carolina Constitution to the People of North Carolina acting through the General Assembly.² For decades, the

¹ While Carrboro’s claims lack merit, they are taken at face value for purposes of this designation only. In filing this Notice of Designation, Duke Energy does not waive, and expressly preserves, any right, defense, affirmative defense, or objection.

² And here, Carrboro’s claims as detailed in its Complaint implicate much more than just State energy policy because the source of its claims—Duke Energy’s subsidiaries’ interstate emissions by regulated utilities in multiple states (Compl. ¶ 21)—necessarily raises questions and defenses under other states’ laws, the federal Clean Air Act, the First Amendment, and due process under the U.S. Constitution to name a few.

General Assembly has delegated much of this authority to the North Carolina Utilities Commission—and has not elected to delegate its authority to the single town of Carrboro. Carrboro does not have authority over North Carolina’s energy policy, much less interstate emissions. Carrboro cannot displace the General Assembly and the Utilities Commission, not to mention the legislatures and utility regulators of other states and the federal government. And Carrboro cannot regulate the rates charged by Duke Energy’s subsidiary utilities in multiple jurisdictions through unprecedented and ahistorical applications of North Carolina public nuisance, private nuisance, trespass, negligence, and gross negligence torts. Yet that is precisely what this Complaint seeks to do under the guise of Carrboro’s “corporate authority.”

If this suit proceeds, then each of North Carolina’s 100 counties and 550+ municipalities could proceed in similar fashion against Duke Energy for its alleged role in the global climate crisis. Under N.C.G.S. § 7A-45.4(a)(1), this Court properly decides whether the corporate authority of Carrboro empowers it to take this unprecedented and ahistorical action to regulate Duke Energy’s utilities’ interstate emissions, to direct the energy and regulatory policy of North Carolina (and other states), and to impose financial burdens on ratepayers nationwide.

BACKGROUND

Carrboro asserts authority to bring this action pursuant to “N.C. Gen. Stat. § 160A-11 and as an exercise of its general police power,” stating that power “includes, but is not limited to, its power to prevent injuries to and pollution of the

Town’s property, to prevent and abate nuisances, and to prevent and abate hazards to public health, safety, welfare, and the environment.” Compl. ¶ 31. Under Section 160A-11, the General Assembly imbues municipalities with limited rights as “a municipal corporation.”

ARGUMENT

This unprecedented action qualifies as a mandatory complex business case under N.C. Gen. Stat. § 7A-45.4(a)(1) because it turns on the corporate authority of Plaintiff, a municipality, as a “municipal corporation” to invoke its “Corporate powers” under N.C. Gen. Stat. § 160A-11 to regulate interstate emissions of Duke Energy’s utilities, and the energy policy of North Carolina and other states.³

Municipal corporations in North Carolina derive their powers solely from the authority granted to them by the General Assembly. N.C. Const. art. VII; N.C. Gen. Stat. § 160A-11. They are not sovereign. They cannot exercise powers beyond those explicitly delegated to them by the General Assembly. N.C. Const. art. VII. Those powers also must comply with the U.S. Constitution, North Carolina Constitution, and concomitant common law limits. N.C. Const. art. VII; U.S. Const. amend. X. Moreover, municipal corporations are also bound by the same legal obligations that govern private corporations, subject to judicial oversight and the constraints of established legal precedents. N.C. Const. art. VIII.

³ Carrboro asserts that on electricity costs alone it is entitled to “millions of additional dollars.” Compl. ¶ 202. The amount in controversy thus qualifies for mandatory designation.

The North Carolina Constitution vests the General Assembly with sole authority to create local municipal corporations and prescribe the powers of those corporations. *See* N.C. Const. art. VII (“The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.”); N.C. Const. art. VIII (vesting all power to define corporations with the General Assembly). And “[n]either city charter nor ordinance enacted pursuant thereto have extraterritorial effect unless authorized by legislative grant.” *Smith v. City of Winston-Salem*, 247 N.C. 349, 354, 100 S.E.2d 835, 838 (1957); *Lee v. Poston*, 233 N.C. 546, 548, 64 S.E.2d 835, 837 (1951) (“A municipal corporation may be defined with terseness as a subordinate agency created by the State to assist in the civil government of the territory and people embraced within its limits.”).

Here, Carrboro seeks damages from Duke Energy, a corporation with subsidiaries operating utilities in multiple states (Compl. ¶ 21), for Duke Energy’s alleged role in global climate change. Carrboro’s approach stands as the first of its kind. It ignores and distorts basic tenets of state law and municipal corporate authority. And Carrboro would elevate itself—and in so doing elevate more than 500 other municipalities in North Carolina—to compete with the governing federal and state frameworks for addressing climate change.

This is a case of first impression for the Business Court, but it is not the first time the Business Court has assessed cases involving important questions of municipal corporate law. Indeed, the Business Court’s history involves multiple cases in which it has passed judgment on municipal corporate law. *See, e.g., Berger v. New Hanover Cnty. Bd. of Comm’rs*, No. 13 CVS 1942, 2013 WL 4792508, at *9 (N.C. Super. Sept. 5, 2013); *Universal Cab Co. v. City of Charlotte*, No. 14 CVS 10914, 2015 WL 966302, at *1 (N.C. Super. Mar. 5, 2015), *aff’d*, 247 N.C. App. 479, 787 S.E.2d 464 (2016); *Johnson Bros. Corp. v. City of Charlotte*, No. 23 CVS00 2076-590, 2024 WL 807479, at *6-*8 (N.C. Super. Feb. 27, 2024), *amended on reconsideration in part*, No. 23CVS002076-590, 2024 WL 2874564 (N.C. Super. June 7, 2024); *see also Lexington Hous. Auth. v. Terrance Gerald & Haven Redevelopment Grp.*, No. 19 CVS 1036, 2019 WL 5681660, at *2 (N.C. Super. Nov. 1, 2019); *S. Env’t L. Ctr. v. Saylor*, No. 19 CVS 500268, 2019 WL 4349608, at *3 (N.C. Super. Sept. 11, 2019); *DiCesare v. Charlotte-Mecklenburg Hosp. Auth.*, No. 16 CVS 16404, 2019 WL 984301, at *1 (N.C. Super. Feb. 27, 2019), *aff’d in part, rev’d in part*, 376 N.C. 63, 852 S.E.2d 146 (2020). The Business Court’s authority to address the reach of municipal corporate law warrants designation here. N.C. Gen. Stat. § 7A-45.4(1); *cf.* N.C. Const. art. II, § 1 (vesting the legislative power of the State in the General Assembly).⁴

⁴ Should this Court decline to designate, Duke Energy will request the Senior Resident Superior Court Judge in Orange County, and ultimately the Chief Justice, deem this matter complex and assign it under Rule 2.1 of the General Rules of Superior Court.

This Notice of Designation is timely filed. Plaintiff filed its Complaint on December 4, 2024. Defendant was served with the Complaint and Summons on December 10, 2024, and this Notice of Designation is being filed within 30 days of that date. In accordance with N.C. Gen. Stat. § 7A-45.4(c), and the North Carolina Business Court's published procedures for designating Complex Business Cases, this Notice of Designation is being served by email to NOD.intake@businesscourt.net. As of the date of this Notice of Designation, there are no pending motions or other filings in this action.

This the 6th day of January, 2025.

/s/ Christopher G. Smith

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*Attorneys for Defendant Duke Energy
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF DESIGNATION** has been served by electronic mail to:

The Honorable Michael L. Robinson
Chief Special Superior Court Judge for Complex Business Cases
c/o NOD.intake@ncbusinesscourt.net

The Honorable Paul M. Newby
Chief Justice of Supreme Court of North Carolina
c/o NOD.intake@ncbusinesscourt.net

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Attorney for Plaintiff

This the 6th day of January, 2025.

SMITH, ANDERSON, BLOUNT, DORSETT,
MITCHELL & JERNIGAN, L.L.P.

By: /s/ Christopher G. Smith
Christopher G. Smith