

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1276

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Energy Carolinas, LLC)	SUPPLEMENTAL
for Adjustment of Rates and Charges)	POST-HEARING BRIEF
Applicable to Electric Service in North)	OF CIGFUR III
Carolina and Performance Based Regulation)	

NOW COMES the Carolina Industrial Group for Fair Utility Rates III (CIGFUR III), by and through undersigned counsel, and submits this Supplemental Post-Hearing Brief (Supplemental Brief) in the above-captioned docket, addressing the testimony and evidence received during the reconvened hearing in this matter on October 30, 2023. CIGFUR III hereby reiterates and incorporates by reference herein its Post-Hearing Brief and Partial Proposed Order filed in this docket on October 11, 2023.

CIGFUR III notes at the outset that while it understands the Commission has already denied its Joint Motion to Strike and Second Joint Motion to Strike,¹ as well as overruled its objections and renewed objections regarding Public Staff witness D. Williamson's Supplemental Testimony,² CIGFUR III nevertheless renews and incorporates by reference hereto its objections on each and every relevant basis previously raised.

¹ See Order Denying Motion to Strike and Reconvening Hearing, Docket No. E-7, Sub 1276 (N.C.U.C. Oct. 23, 2023) and Order Responding to Second Motion to Strike and Establishing Hearing Procedures, Docket No. E-7, Sub 1276 (N.C.U.C. Oct. 24, 2023).

² See Tr. vol. 17, pp. 38-39;

ARGUMENT

The Public Staff's recommended revenue apportionment is not competent evidence.

For expert witness testimony to be considered competent evidence in North Carolina, such testimony “must be based on sufficient data and not mere conjecture or speculation.” *In re Collins*, 49 N.C. App. 243, 247, 271 S.E.2d 72, 74-75 (1980) (*citing Dean v. Coach Co.*, 287 N.C. 515, 522, 215 S.E.2d 89, 94 (1975)). Moreover, “the premises underlying an expert’s opinion must be made known to the trier of fact in order that the trier of fact may properly evaluate the opinion.” *Id.* at 247, 271 S.E.2d at 75 (*citing Schafer v. R.R.*, 266 N.C. 285, 288-89, 145 S.E.2d 887, 890 (1966); *Service Co. v. Sales Co.*, 259 N.C. 400, 414, 131 S.E.2d 9, 20 (1963)). Here, Public Staff witness D. Williamson’s revenue apportionment testimony fails to satisfy either requirement. See, e.g., Ex. vol. Reconvened Hearing, pp. 244 and 251-252 (CIGFUR III Williamson Supplemental Cross Exhibit 1, including Public Staff’s Responses to CIGFUR III Data Requests 1-7, 3-4, 3-6, and 3-7); see also Ex. vol. Reconvened Hearing, pp. 264, 266, 268, 270, 272, 274, 280, and 282 (CIGFUR III Byrd & Beveridge Supplemental Rebuttal Cross Exhibit 1, including DEC’s Responses to CIGFUR III Data Requests 5-3, 5-4, 5-5, 5-6, 5-7, 5-8, 5-11, and 5-12).

Significantly, DEC witness Byrd testified on cross-examination that “if multiple rate designers were asked to apply the approach Witness Williamson used, it’s very reasonable to expect you would get five different answers from five different rate designers.” Tr. vol. 17, p. 161. While the approach employed by DEC and other witnesses who offered revenue apportionment testimony in this

proceeding is verifiable and replicable by the parties, the approach utilized by witness Williamson “is Witness Williamson’s professional judgment. And so if we got a different revenue requirement and those numbers needed to change to optimize the new revenue requirement, ... what those numbers should be is unclear.” *Id.* at 180. Whereas DEC’s methodology, for example, is formulaic, witness Williamson’s methodology contains some “hard coded” cells in witness Williamson’s apportionment spreadsheet. *Id.* at 155. In other words, witness Williamson “used his discretion to manipulate the revenue apportionment by class.” *Id.*

The Public Staff has maintained throughout this rate case that it requires a final revenue requirement number in order to provide a recommended revenue apportionment, and such is the crux of its argument for why witness Williamson was unable to provide a recommended revenue apportionment during his pre-filed direct testimony.³ On the stand, when asked about how a different revenue requirement would affect witness his model, witness Williamson noted that as revenue requirement changes, “you might start to skew in one direction that may or may not be ideal, as far as what the rate of return actually is supposed to look like based off of those conditions.” *Id.* at 72.

Witness Williamson conceded that the Public Staff’s internal policy of requiring a final revenue requirement number first before providing a revenue apportionment recommendation is for the purpose of enabling the Public Staff to apply its four guiding revenue apportionment principles. See *id.* at 73. In other

³ See, e.g., *Public Staff’s Response to Joint Motion to Strike and Request for Relief* at Page 3, arguing that “[R]ate and revenue apportionment are dependent on a revenue requirement.”

words, the Public Staff “prefers” that it have a final revenue requirement number first so that can apply its discretion to manipulate revenue apportionment inputs and/or outputs in a way that is (1) not verifiable or replicable; (2) not supported by data or other evidence in the record; (3) not transparent; and (4) methodologically unsound. Furthermore, witness Williamson undermined the Public Staff’s position that it requires a final revenue requirement number as a prerequisite to its ability to proffer a revenue apportionment recommendation when he conceded that “if we had [the] revenue requirement that another party wanted to offer, then we could plug it into the – into that spreadsheet and could provide those results.” *Id.* at 73. D. Williamson went on to admit that “if the Commission determines that a different revenue requirement should be determined then that revenue requirement would flow through this model.” *Id.* at 74.

These admissions by witness Williamson do not, however, answer the question of why the Public Staff could not have simply used their model to offer a range of apportionment recommendations using different revenue requirement numbers at a much earlier and more timely date. Moreover, that this is the first time the Public Staff has made such an admission about an issue that has been at the center of so much controversy in this docket casts doubt on both witness Williamson’s credibility and the Public Staff’s stated rationale⁴ for withholding its revenue apportionment recommendation until 86 days after other parties filed

⁴ “It is a fact that rates cannot be apportioned until there is a final revenue requirement.” *Public Staff’s Response to the Joint Motion of Blue Ridge et al. and CIGFUR III to Strike and Request for Relief*, at p. 3 (Oct. 19, 2023).

their direct testimony in this docket, 46 days after the evidentiary hearing in this matter began, and 41 days after the evidentiary hearing in this matter ended.

For these reasons, Public Staff witness D. Williamson's expert witness opinions regarding his revenue apportionment recommendations are not competent evidence and should therefore be given no weight by the Commission.

WHEREFORE, CIGFUR III respectfully submits this Supplemental Post-Hearing Brief and requests that it be considered when the Commission renders its decision in this docket and for such other and further relief as the Commission deems just and appropriate.

Respectfully submitted, this the 6th day of November, 2023.

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CERTIFICATE OF SERVICE

The undersigned attorney for CIGFUR III hereby certifies that she caused the foregoing *Supplemental Post-Hearing Brief* to be served upon all parties of record to Docket No. E-7, Sub 1276, as set forth in the Service List for such docket maintained by the NCUC Chief Clerk's Office, by electronic mail.

This the 6th day of November, 2023.

/s/ Christina D. Cress

Christina D. Cress