

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 177

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Rulemaking Proceeding to Implement)	REPLY COMMENTS OF
Securitization of Early Retirement of Subcritical)	CIGFUR II & III
Coal-Fired Generating Facilities)	

NOW COME the Carolina Industrial Group for Fair Utility Rates II (CIGFUR II) and the Carolina Industrial Group for Fair Utility Rates III (CIGFUR III) (together with CIGFUR II, CIGFUR), pursuant to the Commission’s October 14, 2021 Order Requesting Comments and Proposed Rules, and respectfully submit the following reply comments in the above-captioned docket. At the outset, CIGFUR hereby reiterates and incorporates by reference herein the initial comments it filed in this docket on November 22, 2022.

Next, CIGFUR notes issues where it is aligned with the positions of other parties to this docket, including but not necessarily limited to the following:

- CIGFUR supports the Public Staff’s recommendation that “all possible steps be taken to ensure a successful securitization process for retired coal assets.”¹ To that end, CIGFUR reiterates the recommendations made in its initial comments, particularly with respect to involving qualified bond counsel to opine on the likely future marketability (or lack thereof, as the case may be) of coal retirement bonds pursuant to the language set forth in Section 5 of House Bill 951 (S.L. 2021-165). Moreover, CIGFUR notes that the Public Staff, CUCA, and Tech Customers also

¹ Initial Comments of the Public Staff, Docket No. E-100, Sub 177, pp. 2-3 (Nov. 22, 2021).

made substantively similar recommendations in their respective initial comments – with which CIGFUR agrees – either raising doubt regarding the sufficiency of the enabling language set forth in S.L. 2021-165 and/or the need to obtain input from independent bond counsel on issues like, among other things, whether the Commission’s coal retirement securitization rules may be able to cure any potential deficiency in the enabling language of S.L. 2021-165 by providing the requisite non-impairment language upon which the investment underwriting community can rely.² In addition, CIGFUR supports the recommendation included in the Sierra Club/NRDC’s reply comments that the Commission should direct such bond counsel opinion to be obtained from a nationally recognized law firm with a presence in North Carolina and expertise in North Carolina law.

- CIGFUR supports the Public Staff’s recommendation to integrate factors related to amounts and timing of securitization into the Carbon Plan development process, pending in Docket No. E-100, Sub 179, to enable the Commission to select for “the lowest present value (least-cost) of revenue requirements achievable pursuant to S.L. 2021-165,”³ as required by S.L. 2021-165.⁴

² *Id.* at p. 4; Initial Comments of Tech Customers, Docket No. E-100, Sub 177, pp. 4-7 (Nov. 22, 2021); Initial Comments of CUCA, Docket No. E-100, Sub 177, pp. 3-8 (Nov. 22, 2021).

³ *Id.* at p. 5.

⁴ Develop a plan, no later than December 31, 2022, with the electric public utilities, including stakeholder input, for the utilities to achieve the authorized reduction goals, which may, at a minimum, consider power generation, transmission and distribution, grid modernization, storage, energy efficiency measures, demand-side management, and the latest technology breakthroughs **to achieve the least cost path consistent with this section** to achieve compliance with the authorized carbon reduction goals (the “Carbon Plan”).

Section 1.(1), S.L. 2021-165 (emphasis added).

- CIGFUR agrees with the Public Staff, Sierra Club, and Natural Resources Defense Council that the language providing for the securitization of retired coal assets in S.L. 2021-165 should be implemented – and all open questions resolved – in the way that provides the greatest savings flowing directly to ratepayers.⁵
- CIGFUR agrees with the Public Staff that the Commission’s rules governing coal retirement securitization should contain the Public Staff’s “Best Practices” recommendations, including:
 - 1) the formation of the Bond Advisory Team comprised of representatives of the Companies, the Commission, and the Public Staff;
 - 2) inviting all Bond Advisory Team members to join all meetings to review and comment on all aspects of the structuring, marketing, and pricing of the bonds, timely information of which is to be provided in advance to Bond Advisory Team members;
 - 3) requiring certifications that the structuring, marketing, and pricing of the bonds in fact resulted in the lowest charge to ratepayers consistent with market conditions at the time the

(2) Comply with current law and practice with respect to the **least cost planning for generation**, pursuant to G.S. 62-2(a)(3a), in achieving the authorized carbon reduction goals and determining generation and resource mix for the future.

Section 1.(2), S.L. 2021-165 (emphasis added).

b. To the extent that new solar generation is selected by the Commission, **in adherence with least cost requirements**, the solar generation selected shall be subject to the following...

Section 1.(2)b., S.L. 2021-165 (emphasis added).

Retain discretion to determine optimal timing and generation and resource-mix **to achieve the least cost path** to compliance with the authorized carbon reduction goals...

Section 1.(4), S.L. 2021-165 (emphasis added).

⁵ See, e.g., Initial Comments of the Public Staff, Docket No. E-100, Sub 177, p. 5 (Nov. 22, 2021); Initial Comments of the Sierra Club and Natural Resources Defense Council, Docket No. E-100, Sub 177, pp. 5-6 (Nov. 22, 2021).

bonds were priced and the terms set forth in the Commission's Financing Orders; and

- 4) requiring auditing by the Public Staff of ongoing financing costs associated with the bond issuances.⁶
- CIGFUR further agrees with the Public Staff's recommendation that the Commission's rules contain language with respect to non-impairment of coal retirement bonds financed and issued pursuant to S.L. 2021-165, in addition to the Commission's forthcoming rules to implement the pertinent provisions of S.L. 2021-165, and the Commission's eventual financing order preceding bond issuance at some point.
 - CIGFUR supports CUCA's recommendation that the Commission should require Duke Energy Progress, LLC (DEP) and Duke Energy Carolinas, LLC (DEC) (together with DEP, Duke) to disclose immediate information on its coal fleet, including which plants meet the definition of "subcritical coal-fired electric generating facilities." CIGFUR further supports CUCA's recommendation that model rules should be modeled based on the draft statutory provisions set forth in Edition 2 of House Bill 951 and S.L. 2019-244.

Finally, CIGFUR highlights some areas of disagreement with other parties, including but not necessarily limited to the following:

- CIGFUR reads Duke's proposed securitization of coal asset early retirement rules to be permissive in nature, with the decisions of whether or not the applicable electric public utility files either a petition for review and approval of coal retirement costs or petition for a financing order being left to the discretion of the

⁶ Initial Comments of the Public Staff, Docket No. E-100, Sub 177, pp. 2-3 (Nov. 22, 2021).

utility.⁷ Consistent with the directives set forth in House Bill 951,⁸ however, CIGFUR recommends instead that the Commission adopt a rule that clearly requires Duke to pursue financing for the maximum amount of coal retirement costs authorized to be securitized under S.L. 2021-165.

- CIGFUR reads Duke’s proposed securitization of coal asset early retirement rules as an attempt to “kick the can down the road” with respect to defining which coal-fired generating facilities retired or proposed to be retired early pursuant to House Bill 951 qualify as “subcritical.” Duke has every reason to want to include as few facilities in its definition of “subcritical” as possible, which reduces the benefit to which ratepayers are entitled pursuant to S.L. 2021-165. In other words, CIGFUR is concerned that, by avoiding a clear and unambiguous definition regarding exactly which early retiring coal-fired plants and units qualify as “subcritical” now, on the front end of this regulatory process, Duke may attempt to avoid securitizing the remaining costs associated with certain plants or units by attempting to obfuscate which plants within its coal fleet can and should be characterized as subcritical for purposes of early retirement securitization. CIGFUR

⁷ (c) Procedure for Coal Retirement Securitization proceeding.

...

2. Financing order issuance schedule.

- a. A public utility **may** file a petition for a financing order no sooner than 90 days after filing a petition for review and approval of coal retirement costs, **if a petition for review and approval of coal retirement costs is filed** [by the applicable utility] (emphasis added).

Duke’s Initial Comments, Docket No. E-100, Sub 177, p. 5 (Nov. 22, 2021).

⁸ “The Utilities Commission is authorized to and shall within 180 days of the effective date of this section, with stakeholder input and participation, establish rules for securitization of costs associated with early retirement of subcritical coal-fired electric generating facilities. With respect to securitization of costs associated with early retirement of subcritical coal-fired electric generating facilities, **the Commission shall develop rules to determine costs to be securitized at fifty percent (50%) of the remaining net book value of all subcritical coal-fired electric generating facilities to be retired**” (emphasis added). Part III, Section 5 (S.L. 2021-165).

recommends that the Commission adopts rules which provide certainty to all parties by resolving this issue now, on the front end, in rulemaking. CIGFUR recommends that the Commission look to a number of sources in determining which coal-fired facilities are “subcritical,” and thus eligible to have 50% of the remaining net book value securitized pursuant to S.L. 2021-165. First, CIGFUR points to the following tables from Governor Cooper’s Clean Energy Plan (CEP) A-1 Report⁹:

North Carolina Today

Duke Energy Carolinas (DEC) and Duke Energy Progress (DEP) own the remaining coal capacity in North Carolina. DEC operates 13 coal units at the Allen, Belews Creek, Cliffside/Rogers, and Marshall Steam Stations; DEP operates 5 coal units at the Mayo and Roxboro Plants.

Table 5.2. Currently Operating Coal-Fired Electric Generating Units in North Carolina

Subcritical Units		Supercritical Units	
<i>Roxboro Unit 1</i>	369 MW	Marshall Unit 3	658 MW
<i>Roxboro Unit 2</i>	662 MW	Marshall Unit 4	658 MW
Roxboro Unit 3	693 MW	Belews Creek Unit 1	1,110 MW
Roxboro Unit 4	698 MW	Belews Creek Unit 2	1,110 MW
Mayo Unit 1	727 MW	Rogers Unit 6	825 MW
<i>Allen Unit 1</i>	162 MW		
<i>Allen Unit 2</i>	162 MW		
<i>Allen Unit 3</i>	261 MW		
<i>Allen Unit 4</i>	276 MW		
<i>Allen Unit 5</i>	266 MW		
Rogers Unit 5	562 MW		
Marshall Unit 1	380 MW		
Marshall Unit 2	380 MW		

Note. Units in italics: assumed retirements in the 2020s.

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⁹ Kate Konschnik, Martin Ross, Jonas Monast, Jennifer Weiss, and Gennelle Wilson, “Power Sector Carbon Reduction: An Evaluation of Policies for North Carolina,” Nicholas Institute for Environmental Policy Solutions (2021), available at https://nicholasinstitute.duke.edu/sites/default/files/publications/Power-Sector-Carbon-Reduction-An-Evaluation-of-Policies-for-North-Carolina-Revised_0.pdf (last accessed Dec. 19, 2021).

¹⁰ *Id.* at p. 42.

Table B.1. DEP/DEC Coal Units

Plant Name	Unit ID	County	NEEDS Summer Capacity (MW)	DEC/DEP IRP Capacity (MW)		Heat Rate (Btu/kWh)	On-Line Year	NEEDS Retirement Year	DEC/DEP IRP Retirement Date	Boiler Type	DEC/DEP IRP Resource Type	Scrubber Online Year	NOx Post-Comb Control	NOx Online Year	ACI Coal-to-Gas Online Year	Convert
				Winter	Summer											
Marshall (NC)	1	Catawba	370	380	370	9520	1965		12/2034	subcritical	intermediate	2007	SNCR	2006		
Marshall (NC)	2	Catawba	370	380	370	9523	1966		12/2034	subcritical	intermediate	2007	SNCR	2007		
Marshall (NC)	3	Catawba	658	658	658	9426	1969		12/2034	supercritical	base	2007	SCR	2009		
Marshall (NC)	4	Catawba	660	660	660	9361	1970		12/2034	supercritical	base	2006	SNCR	2008	2016	
James E. Rogers	5	Cleveland	544	546	544	9605	1972		12/2032	subcritical	peaking	2010	SCR	2002		2019
James E. Rogers	6	Cleveland	844	849	844	9167	2012		12/2048	supercritical	intermediate	2012	SCR	2012		2019
G G Allen	1	Gaston	162	167	162	10739	1957	2024	12/2024	subcritical	peaking	2009	SNCR	2003		
G G Allen	2	Gaston	162	167	162	10800	1957	2024	12/2024	subcritical	peaking	2009	SNCR	2008		
G G Allen	3	Gaston	258	270	261	10401	1959	2024	12/2024	subcritical	peaking	2009	SNCR	2005		
G G Allen	4	Gaston	257	267	257	10430	1960	2029	12/2028	subcritical	intermediate	2009	SNCR	2006	2016	
G G Allen	5	Gaston	259	259	259	10422	1961	2029	12/2028	subcritical	peaking	2009	SNCR	2008	2016	
Mayo	1A	Person	364			11235	1983		12/2035	subcritical	intermediate	2009	SCR	2004		
Mayo	1B	Person	364	746	727	11235	1983			subcritical	intermediate	2009	SCR	2004		
Roxboro	1	Person	379	380	379	10316	1966		12/2028	subcritical	intermediate	2008	SCR	2002		
Roxboro	2	Person	671	673	668	10423	1968		12/2028	subcritical	intermediate	2007	SCR	2002		
Roxboro	3A	Person	346			10429	1973			subcritical	intermediate	2008	SCR	2003		
Roxboro	3B	Person	346	698	694	10429	1973		12/2033	subcritical	intermediate	2008	SCR	2003		
Roxboro	4A	Person	349			10453	1980			subcritical	intermediate	2007	SCR	2001		
Roxboro	4B	Person	349	711	698	10453	1980		12/2033	subcritical	intermediate	2007	SCR	2001		
Belews Creek	1	Stokes	1110	1110	1110	9174	1974		12/2038	supercritical	base	2008	SCR	2003		
Belews Creek	2	Stokes	1110	1110	1110	9170	1975		12/2038	supercritical	base	2008	SCR	2004		

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In addition, CIGFUR notes that certain Duke regulatory filings are relevant for purposes of determining which facilities qualifying as “subcritical” pursuant to the CEP A-1 Report were in service as of the date when House Bill 951 was enacted into law in October 2021. For example, consider Duke’s February 2, 2021 filing in Docket No. E-100, Sub 165, stating that DEC would be accelerating the retirement of Allen Unit 3 from December 31, 2021 to March 31, 2021. Consider also Duke’s December 3, 2021 filing in Docket No. E-100, Sub 165, stating that DEC would be accelerating the retirement of Allen Units 2 and 4 from December 31, 2024 and December 31, 2026, respectively, to December 31, 2021. When taken together with the CEP A-1 Report, CIGFUR recommends that the Commission adopt a rule that defines “subcritical” units for purpose of retiring units/plants eligible for securitization that includes the following facilities:

- (1) Allen Plant, Units 1, 2, 4, and 5, located in Gaston County;
- (2) Cliffside (aka Rogers) Plant, Unit 5, located in Cleveland County;

¹¹ *Id.* at p. 152.

- (3) Marshall Plant, Units 1 and 2, located in Catawba County;
- (4) Mayo Plant, Unit 1, located in Person County; and
- (5) Roxboro Plant, Units 1-4, located in Person County.

CIGFUR notes that its proposed list of “subcritical” coal-fired facilities is consistent with the definition of “Subcritical coal-fired generating facilities” as reflected in the third edition of House Bill 951.¹² For all these reasons, CIGFUR recommends that the Commission adopt a coal retirement securitization rule that expressly and specifically defines which plants and units qualify as “subcritical.”

CIGFUR appreciates the opportunity to file these reply comments regarding the adoption of rules to implement the pertinent provisions of S.L. 2021-165.

WHEREFORE, CIGFUR respectfully requests that the Commission consider these reply comments.

Respectfully submitted this 20th day of December, 2021.

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¹² <https://www.ncleg.gov/Sessions/2021/Bills/House/PDF/H951v3.pdf> (last accessed Dec. 19, 2021).

CERTIFICATE OF SERVICE

The undersigned attorney for CIGFUR certifies that she served by electronic mail the foregoing Reply Comments of CIGFUR II & III upon the parties of record in this proceeding, as set forth in the service list for this docket maintained by the Chief Clerk of the North Carolina Utilities Commission.

This the 20th day of December, 2021.

By: /s/ Christina D. Cress
Christina D. Cress