

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1283
DOCKET NO. E-7, SUB 1259

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:		
Joint Petition of Duke Energy Carolinas, LLC)	
and Duke Energy Progress, LLC to Request the)	INITIAL COMMENTS OF
Commission to Hold a Joint Hearing with the)	CIGFUR II AND III
Public Service Commission of South Carolina)	
to Develop Carbon Plan)	

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) (collectively, CIGFUR), pursuant to the Commission’s November 23, 2021 Order Requesting Comments on Petition for Joint Proceeding, and respectfully submit the following initial comments in the above-captioned dockets.

On October 13, 2021, Governor Cooper signed into law House Bill 951 as Session Law 2021-165 (S.L. 2021-165). Among other things, S.L. 2021-165 enacts uncodified provisions directing the Commission to take all reasonable steps, while adhering to least-cost and reliability requirements, to achieve a 70% reduction in emissions of carbon dioxide (CO₂) emitted in the State from electric generating facilities, in addition to various statutory amendments to the provisions of Chapter 62 of the North Carolina General Statutes.

At this time, CIGFUR declines to take a substantive position on the merits of the petition for joint proceeding filed by Duke Energy Progress, LLC (DEP) and Duke Energy Carolinas, LLC (DEC) (together, Duke) in the above-referenced dockets. However, CIGFUR believes it important and necessary to raise the following related issues for the Commission’s consideration at this time:

- Both DEP and DEC are public utilities subject to the respective state jurisdictions of this Commission and of the Public Service Commission of South Carolina. Regardless of whether this Commission and the Public Service Commission of South Carolina (PSCSC) grant Duke's petition for a joint bistate proceeding on the Carbon Plan, CIGFUR believes each Commission should and would retain its full jurisdiction and regulatory authority over all aspects of Duke's retail electric service and rates within each respective state.
- The Carbon Plan requirement set forth in S.L. 2021-165 does not replace, supersede, supplant, or otherwise serve as a substitute for existing law governing Duke's current integrated resource planning, as set forth in N.C. Gen. Stat. § 62-110.1(c) and Commission Rule R8-60 in North Carolina and The Energy Freedom Act (Act 62) in South Carolina. Rather, the Carbon Plan was intended by the North Carolina General Assembly to supplement and function in tandem with Duke's current integrated resource planning process.
- CIGFUR recognizes that various factual and legal issues related to future recovery of Carbon Plan implementation costs are not yet ripe for decision by either Commission. Along these same lines, CIGFUR further recognizes that, generally speaking, determinations regarding the reasonableness and prudence of DEC's and DEP's respective future capital expenditures related to the Carbon Plan will occur not as part of any joint bistate proceeding to develop the initial Carbon Plan, but instead as issues to be decided in one or more future general rate case proceedings held before this Commission and the PSCSC, respectively. As a result, comments related to cost recovery considerations are, at this time, largely premature. That

said, however, CIGFUR emphasizes that neither the IRP docket, nor the instant dockets or the generic electric docket initiated to develop the initial Carbon Plan are cost recovery or preliminary prudency review proceedings. To the contrary, these proceedings are resource planning proceedings, the outcomes of which should not in any way be construed as dispositive or presumptive of any findings necessary for cost recovery in a future proceeding, regardless of whether or not this Commission and the PSCSC decide to engage in a bistate proceeding to develop the initial Carbon Plan.

- CIGFUR contends that the existing processes by which Duke (1) demonstrates a need for capacity additions to serve forecasted load in North Carolina and South Carolina, (2) determines which generation mix is the least-cost option, and (3) seeks authority to recover its respective jurisdictional allocable portion of necessary capital expenditures to construct new generation plant, were not altered in form or substance by the enactment of House Bill 951, except insofar as subsection (2) of Section 1 of Part 1 of S.L. 2021-165 requires that the Carbon Plan must maintain or improve reliability of electric service and “[c]omply 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.” Such current law includes, for example, the requirement that “[i]n acting upon any petition for the construction of any facility for the generation of electricity, the Commission shall take into account the applicant’s arrangements with other electric utilities for interchange of power, pooling of plant, purchase of power and other methods for providing

reliable, efficient, and economical electric service.” G.S. 62-110.1(d). CIGFUR likewise contends that none of these existing processes codified in North Carolina law are or should be altered in any way by the decision of this Commission and the PSCSC to engage (or not) in a bistate proceeding to develop the initial Carbon Plan.

- CIGFUR encourages the sharing of capacity across state lines if doing so would create cost savings inuring directly to the benefit of Duke’s ratepayers. That said, to the extent that DEP’s or DEC’s respective production plant is providing capacity or energy for the benefit of its North and South Carolina customers, such costs should continue to be allocated using the appropriate retail jurisdictional allocation factors decided as part of general rate cases. Again, CIGFUR contends this is, and should continue to be, the case regardless of the outcome in the instant dockets, and that the decision of this Commission and the PSCSC to engage (or not) in a bistate Carbon Plan proceeding should not be material to future cost recovery or cost allocation decisions.
- In the event any portion of such costs is disallowed by either jurisdiction in the future, Duke should not expect to recover the difference from ratepayers in the other jurisdiction. Duke was at all times during North Carolina’s 2021 legislative session fully aware of the fact that achieving a 70% system reduction in carbon emissions by 2030 would require supportive policies in both North and South Carolina.¹ That

¹ “In North Carolina, Duke Energy is an active participant in the state’s Clean Energy Plan stakeholder process, which is evaluating policy pathways to achieve a 70% reduction in greenhouse gas emissions from 2005 levels by 2030 and carbon neutrality for the electric power sector by 2050. Accordingly, this year’s IRP includes two resource portfolios that illustrate potential pathways to achieve 70% CO₂ reduction by 2030, **though both scenarios would require supportive state policies in North Carolina and South Carolina**” (emphasis added).

Duke Energy Progress Integrated resource Plan 2020 Biennial Report, p. 6, located at https://desitecoreprod-cd.azureedge.net/_media/pdfs/our-company/irp/202296/dep-2020-irp-full-plan.pdf?la=en&rev=956d92a25e334a75a892a56ef726e18e (last accessed December 8, 2021);

Duke chose instead to vigorously lobby in support of such policies in only one state – North Carolina – was a management decision, the consequences of which should be borne solely by Duke’s shareholders, not its ratepayers.² The Virginia Clean Economy Act (VCEA), which shares some similarities with House Bill 951, is glaringly different from House Bill 951 in that the VCEA, unlike House Bill 951, declares in pertinent part that if the applicable utility

serves customers in more than one jurisdiction, such utility shall recover all of the costs of compliance with the RPS Program requirements from its Virginia customers through the applicable cost recovery mechanism, and all associated energy, capacity, and environmental attributes shall be assigned to Virginia to the extent that such costs are requested but not recovered from any system customers outside the Commonwealth.

Va. Code Ann. § 56-585.5 (2021).

The North Carolina legislative stakeholder process that culminated in the introduction of House Bill 951, on the other hand, was specifically predicated upon the assumption that Carbon Plan implementation costs would be spread among customers in DEP’s and DEC’s respective North and South Carolina service

Duke Energy Carolinas Integrated Resource Plan 2020 Biennial Report, p. 6, located at https://desitecoreprod-cd.azureedge.net/_media/pdfs/our-company/irp/202296/dec-2020-irp-full-plan.pdf?la=en&rev=f907071cc4dc4651b25ab93ca6f3d8f0 (last accessed December 8, 2021).

² This was certainly not the first time Duke’s sophisticated team of lobbyists made the calculated decision to deploy divergent lobbying strategies as between North Carolina and South Carolina. In September 2020, South Carolina legislation, for which Duke lobbied in support, to establish an electricity market reform study committee was enacted into law (H.4940). Recognizing that Duke’s balancing authorities cross state lines, some stakeholders advocated for a joint North Carolina and South Carolina study. Unlike in South Carolina, however, Duke vehemently lobbied against a market study in North Carolina as being unnecessary, stating publicly that “‘North Carolina is poised to make great progress towards modernizing our state’s energy plans under a regulated model that holds energy providers accountable for reliable power and investing appropriately for the state’s needs now and in the future,’ [Duke Energy spokesperson Grace Rountree] said.” S&P Global Market Intelligence, “Duke opposes NC legislation to study power market reform” (May 26, 2021), *available at* <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/duke-opposes-nc-legislation-to-study-power-market-reform-64492959> (last accessed on December 14, 2021).

territories.³ The estimates of ratepayer impacts and costs associated with House Bill 951, which were prepared for or at the request of lawmakers, assumed as much, and it was these same estimates and analyses upon which Duke heavily relied when minimizing valid concerns about ratepayer impacts resulting from the passage of this legislation and lobbying lawmakers to vote in favor of its passage. That Duke failed to account for the jurisdictional cost of service impacts that could result from pushing the enactment of a Carbon Plan policy in one state, but not the other, was a management decision for which Duke's shareholders, not its ratepayers, should bear the consequences.

WHEREFORE, CIGFUR respectfully requests that the Commission consider the foregoing initial comments in consideration of the above-referenced docket.

³ See below snippet from a handout disseminated by Duke's lobbying team to NCGA legislative members and staff and H951 stakeholders in or about early April 2021. Upon information and belief, the H951 cost analysis scoring that the NCGA directed the Public Staff to prepare also assumed costs would be spread across DEP's and DEC's respective North and South Carolina customers.

Bill Impact Modeling Assumptions

- Cost of service:
 - Allocations to retail are from the last rate cases (2019). Do not assume changes in any allocations over the planning horizon
 - Modeled DEC and DEP retail jurisdictions in total (Combined NC and SC)
 - Depreciation rates: Used rates from last rate case
 - Cost of capital: Used a weighted NC / SC cost of capital from last rate cases
 - Beginning "Total" revenue requirement is the "Book Revenues" from the NC and SC cost of service

Respectfully submitted this the 20th day of December, 2021.

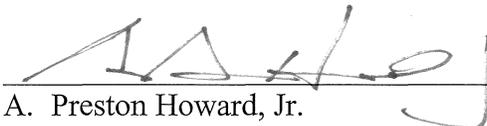
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VERIFICATION

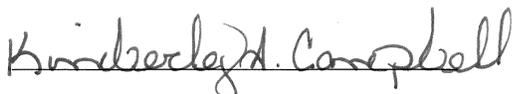
A. Preston Howard, Jr., who works as a contract lobbyist for CIGFUR II and III, states that he has read the foregoing Initial Comments and that the facts stated therein are true of his personal knowledge, except such matters as are stated on information and belief, and as to those matters he believes them to be true.


A. Preston Howard, Jr.

Wake County, State of North Carolina

I certify that A. Preston Howard, Jr. personally appeared before me this day, proved his identity to me by satisfactory evidence, and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein.

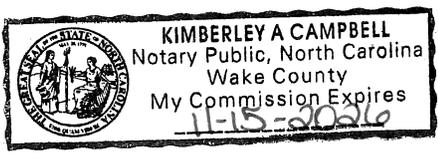
Date: 12/15/2021


Notary Public

Kimberley A Campbell
Typed or Printed Name of Notary

(Official Seal)

My commission expires: 11-15-2026



CERTIFICATE OF SERVICE

The undersigned attorney for CIGFUR hereby certifies that she served the foregoing Initial Comments of CIGFUR II & III upon the parties to this proceeding, as listed on the service list available on the NCUC's online docket system, by electronic mail.

This the 20th day of December, 2021.



Christina D. Cress