

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) INITIAL 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) (collectively, CIGFUR), pursuant to the Commission’s October 14, 2021 Order Requesting Comments and Proposed Rules (Rulemaking Order), and respectfully submit the following initial comments and partial proposed rules in the above-captioned docket.

BACKGROUND

On October 13, 2021, Governor Cooper signed into law House Bill 951 (S.L. 2021-165). Among other things, S.L. 2021-165 enacted uncodified provisions authorizing and directing the Commission to establish rules for securitization of costs associated with the early retirement of subcritical coal-fired electric generating facilities owned and operated, respectively, by Duke Energy Progress, LLC (DEP) and Duke Energy Carolinas, LLC (DEC) (collectively, Duke). CIGFUR actively participated in the legislative stakeholder process that culminated in the introduction of House Bill 951 and advocated vigorously in support of the securitization of at least 50% of applicable coal retirement costs as a mechanism to mitigate some of the rate impact to Duke’s customers. The ability to successfully securitize the maximum amount of related costs allowable pursuant to S.L. 2021-165 constitutes a critically important opportunity to realize cost savings for ratepayers during a time when there is otherwise extraordinary upward pressure on

retail rates. CIGFUR maintains that the successful securitization of the maximum amount of coal retirement-related costs allowable by law will serve the public interest by realizing cost savings for ratepayers while simultaneously allowing Duke to fully recover its costs incurred in the provision of electric service to customers.

**CIGFUR’S INITIAL COMMENTS ON RULE PROVISIONS
TO IMPLEMENT SECURITIZATION PROVISIONS OF HOUSE BILL 951**

The early retirement of Duke’s subcritical coal fleet will present complex and significant regulatory issues for consideration and decision by the Commission, not the least of which will be the potential for extraordinary rate increases owing to the reality that any subcritical coal-fired generating facility that is retired “early” is, by definition, taken out of service before the end of its useful economic life, but nevertheless still being paid for by Duke’s customers through electric rates. Securitizing the maximum amount of such costs as authorized by law will help offset a portion of what is anticipated will be a monumental financial impact to ratepayers.

Generally speaking, CIGFUR supports the adoption of rules that will facilitate cost-efficient proceedings, limit financing costs, enhance marketability of coal retirement bonds, ensure strong oversight throughout the financing process by both the Commission and the Public Staff, and maximize the amount of ratepayer savings realized. While CIGFUR reserves its right to file responsive reply comments, it wishes to address one specific key concern in these initial comments.

Importantly, CIGFUR notes the requirement imposed by the NC General Assembly that these rules be “substantively identical to the provisions of Section 1 of S.L. 2019-244,”¹ which is codified at N.C. Gen. Stat. § 62-172. The detailed and prescriptive nature of N.C. Gen. Stat. § 62-172 is understood to largely be a function of the requisite boilerplate language necessary to authorize

¹ S.L. 2021-165, § 5.

the Commission to create the storm securitization financial instruments, and in turn to ensure that the storm recovery bonds are marketable. Similarly, CIGFUR emphasizes that the successful securitization of coal retirement costs is wholly dependent upon ensuring at least this same degree of marketability applies to future coal retirement bonds. CIGFUR is concerned that the enabling language authorizing the Commission to utilize securitization as a tool to mitigate rate impacts of the early retirement of Duke's coal fleet may be insufficient to some bond underwriting companies, inasmuch as an incorporation by reference to a different statute governing securitization of materially different costs may be insufficient, thereby potentially reducing or even eliminating ratepayer savings realized. It goes without saying that absent the future marketability of coal retirement bonds, securitization of early retirement costs would be unsuccessful, thereby undermining the ratepayer benefit unambiguously intended by the NC General Assembly to help offset a portion of Duke's coal retirement costs.

For these reasons, CIGFUR recommends that the Commission direct Duke to obtain and file publicly in this docket at least two opinion letters from qualified bond counsel advising whether the securitization language set forth in S.L. 2021-165 is sufficient to enable the competitive selection of underwriters for Duke's future coal retirement bonds and, if not, whether and how the Commission can cure same through rulemaking. In support of this recommendation, CIGFUR notes that it may be several years before a Financing Order is sought by Duke and issued by the Commission such that the relative marketability (or lack thereof) of coal retirement bonds is able to be ascertained definitively. As a result, CIGFUR contends that it is necessary for the protection of ratepayers to resolve this uncertainty now, on the front end, when a solution – to the extent one may be needed – can more readily be obtained either through regulatory or legislative means, or both, rather than some years down the road after financing costs have already been

incurred, in addition to the underlying early retirement costs and capital expenditures for new generation necessary to replace Duke's retiring coal fleet.

CIGFUR appreciates the opportunity to file these initial comments regarding the adoption of rules to implement securitization of coal retirement costs as directed by the Legislature in its enactment of House Bill 951. CIGFUR respectfully reserves its right to file reply comments at the appropriate time.

Respectfully submitted this 22nd day of November, 2021.

BAILEY & DIXON, LLP

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CERTIFICATE OF SERVICE

The undersigned attorney for CIGFUR certifies that she served by electronic mail the foregoing Initial 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 22nd day of November, 2021.

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