

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. E-2, SUB 1300

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Energy Progress, LLC	)	
for Adjustment of Rates and Charges	)	CIGFUR II'S
Applicable to Electric Service in North	)	MOTION FOR STAY
Carolina and Performance Based Regulation	)	PENDING APPEAL

NOW COMES the Carolina Industrial Group for Fair Utility Rates II (CIGFUR II, CIGFUR, or Appellant), pursuant to N.C.G.S. § 62-95 and Rule 8(a) of the North Carolina Rules of Appellate Procedure, and respectfully moves the North Carolina Utilities Commission (Commission) for a limited stay of enforcement of its August 18, 2023 *Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Public Notice* (Order) issued in the above-captioned docket until resolution of CIGFUR II's appeal of the Order. In support of this motion, CIGFUR II respectfully shows as follows:

1. On October 6, 2022, Duke Energy Progress, LLC (DEP or the Company) filed its *Application to Adjust Retail Rates and for Performance-Based Regulation, and Request for an Accounting Order* in the above-captioned docket, along with supporting direct testimony, exhibits, and forms, in the above-captioned proceeding.
2. On August 18, 2023, the Commission issued its Order in the above-captioned proceeding.
3. On September 12, 2023, the Commission issued its *Order Granting Motion for Extension of Time to File Notice of Appeal* in this docket, ordering that

all parties be granted an extension of time up to and including Tuesday, October 17, 2023, to file notice of appeal of the Order.

4. On October 17, 2023, CIGFUR II timely filed its Notice of Appeal and Exceptions to the Order.
5. The outcome of CIGFUR II's appeal of the Order to the North Carolina Supreme Court could materially affect the underlying rate case proceeding, including, potentially, the Order's rulings on the issues raised by Appellant.
6. Pursuant to N.C.G.S. § 62-95, "[p]ending judicial review, the Commission authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it."
7. As to three issues raised by CIGFUR II in its Notice of Appeal, the interests of justice require that the Commission stay the effectiveness of those issues pending resolution of CIGFUR II's appeal. More specifically, the Commission should maintain the status quo during the pendency of CIGFUR II's appeal by:
  - a. Maintaining a 25% interclass subsidy reduction;
  - b. Continuing to use the equal percentage increase/decrease method for allocation of fuel and fuel-related costs among customer classes; and
  - c. Delaying implementation of the Customer Assistance Program (CAP).
8. In order to preserve the rights of Appellant, as well as to maintain the status quo of the parties and the parties' respective positions, as justice so requires, the Commission should enter a temporary, limited stay of the Order as described above, during the pendency of CIGFUR's appeal.

9. No party to this proceeding would be prejudiced by entry of a limited stay of the Order by temporarily maintaining the status quo as to the three issues raised herein during the course of the judicial review process.
10. CIGFUR II believes it could create significant problems to move forward with any changes to the status quo as to the three issues raised herein without first allowing for resolution of the pending appeal, which could undo or otherwise contort one or more of the Commission's decisions regarding those issues. For example, if the Supreme Court finds that the Commission acted in excess of its statutory authority by approving the CAP and reverses the Commission's ruling on that issue, there would presumably be no way to reimburse customers for charges already paid to fund the CAP through both the CAP Rider and the Customer Assistance Recovery Rider (CAR Rider). Such an outcome would be unjust and would mean that customers had paid unlawful, unjust, and unreasonable rates during the interim.
11. In order to place customers in the same position that they would have been in the event the Supreme Court reverses or remands the Order as to any of the three issues raised herein, the Commission should maintain the status quo during the pendency of CIGFUR's appeal by staying implementation of the Order as to the three items raised herein.

WHEREFORE, for the foregoing reasons, CIGFUR respectfully moves for the Commission to stay the effectiveness of the Order as to (1) any change to the current allocation methodology for fuel and fuel-related costs; (2) implementation of the CAP; and

(3) level of interclass subsidy reduction, pending the outcome of CIGFUR's appeal of those issues; and for such other and further relief as the Commission deems just and appropriate.

Respectfully submitted, this the 17<sup>th</sup> day of October, 2023.

**BAILEY & DIXON, LLP**

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Attorneys for CIGFUR II

**CERTIFICATE OF SERVICE**

The undersigned attorney for CIGFUR II hereby certifies that she caused the foregoing *Motion for Stay Pending Appeal* to be served upon all parties of record to Docket No. E-2, Sub 1300, as set forth in the Service List for such docket maintained by the NCUC Chief Clerk's Office, by electronic mail.

This the 17<sup>th</sup> day of October, 2023.

/s/ Christina D. Cress  
Christina D. Cress