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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 for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and Performance Based Regulation	)))))	POST-HEARING BRIEF OF CIGFUR III

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POST-HEARING BRIEF OF CIGFUR III
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I. INTRODUCTION AND OVERVIEW

NOW COMES the Carolina Industrial Group for Fair Utility Rates III (CIGFUR III), by and through the undersigned counsel, and submits this Post-Hearing Brief (Brief) to the North Carolina Utilities Commission (Commission) in the above-captioned docket. In addition to this Brief, CIGFUR III supports the Findings of Facts and Evidence & Conclusions contained in the proposed order submitted by Duke Energy Carolinas, LLC (DEC or the Company) as to the following issues:

(1) The partial stipulation as to Performance Incentive Mechanisms (PIMs) entered into by the Company, the Public Staff, and CIGFUR III;

(2) The partial stipulation as to the Cost of Service Study (COSS) entered into by the Company, the Public Staff, CIGFUR III, and the Carolina Industrial Group for Fair Utility Rates II; and

(3) The partial stipulation as to certain rate design issues entered into by the Company and CIGFUR III.

The scope of this Brief is limited to a handful of discrete, unresolved issues. However, CIGFUR III's silence on any issue in its Brief should not be interpreted as CIGFUR III waiving any position it took throughout the course of this proceeding, except as to the specific issues expressly waived through Stipulations CIGFUR III entered into with the Company and/or the Public Staff in this proceeding. In addition, CIGFUR III reserves the right to supplement its Brief and/or to file a Partial Proposed Order, among other relief, if and when the Public Staff files supplemental testimony in this docket.

This Brief is intended to provide an overview of CIGFUR III's arguments regarding several key issues for Commission determination in the Company's first ever electric general rate case with application for performance-based regulation (PBR) before this Commission.

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This Brief is also intended to reiterate CIGFUR III's positions on certain threshold legal questions, many of which were just interpreted and applied by the Commission for the first time since the enactment into law of Part II of House Bill 951 (S.L. 2021-165), codified as N.C. Gen. Stat. § 62-133.16 (PBR Statute), in the PBR rate case decided by the Commission in Docket No. E-2, Sub 1300. Because of the overlapping nature of many of the issues for decision by the Commission in the instant docket compared to the issues recently decided by the Commission in Docket No. E-2, Sub 1300, the Commission's decision in this first pair of electric PBR rate cases will carry significant precedential value. Therefore, it is especially important that the Commission correctly interpret and apply all provisions of the PBR Statute, particularly with respect to the prescriptive requirements with which the Commission must comply as a threshold matter, consistent with the conditional statutory authority the Commission was delegated to approve a PBR application pursuant to N.C. Gen. Stat. § 62-133.16(b).

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II. ARGUMENT

A. N.C. Gen. Stat. § 62-133.16(b) contains a prescriptive standard to which the Commission must adhere if it approves the Company's PBR application.

N.C. Gen. Stat. § 62-133.16(b) constrains the Commission's statutory authority to approve a PBR application by conditioning that authority on certain prescriptive conditions, including mandatory requirements that the Commission must minimize interclass cross-subsidization and allocate the utility's revenue requirement in a manner consistent with cost causation principles. This results in other ratemaking principles—especially competing ratemaking principles or policy considerations—becoming necessarily subordinate to the principles set forth in G.S. 62-133.16(b) for the purposes of analyzing the threshold issue of whether the Commission has the statutory authority to approve an application for PBR.

Multiple times during the evidentiary hearing of this rate case, the Company attempted to suggest that the Commission apply a different or lesser standard than that which was clearly and unambiguously prescribed in G.S. 62-133.16(b). More specifically, the Company suggested a test that the Commission must balance certain competing priorities. In so doing, the Company is recommending a standard that is erroneous as a matter of law in that it fails to comport with the constraints on the Commission's statutory authority to approve a PBR application, as imposed by G.S. 62.133.16(b). *See, e.g.*, Tr. vol. 10, pp. 252-54. DEC has failed to provide the Commission with an objective basis upon which to decide issues like how to interclass cross-subsidization will be minimized to the greatest extent practicable by the conclusion of the MYRP period. The Company has also failed to meet its burden regarding the threshold issue of whether the Company's proposal to reduce interclass cross-subsidization by 10% complies with the statutory mandate to minimize interclass cross-subsidization "to the greatest extent practicable" when the

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Company previously proposed reducing interclass cross-subsidies by 25% in each of its previous three (3) rate cases decided by the Commission, each of which was filed and adjudicated *before* the PBR Statute was enacted into law in October 2021. *See* Ex. vol. 13, pp. 45-47. Indeed, DEC witness Beveridge testified that in the Company's last general rate case—which, again, preceded enactment into law of the PBR Statute following passage of House Bill 951 in 2021—the Company proposed, and the Commission approved, a 25% interclass cross-subsidy reduction. *See* Tr. vol. 10, pp. 264-65. In fact, in each of the Company's three most recent general rate cases, the Company proposed a 25% interclass cross-subsidy reduction, which was approved by the Commission in two of the three of the Company's most recent rate cases and in the third, a 15% interclass cross-subsidy reduction was approved by the Commission.

- Docket No. E-7, Sub 1026
- Filed 2/4/2013
- Permanent Rates effective 9/25/2013
- Percentage of interclass cross-subsidy reduction proposed by the Company: 25%
- Percentage of interclass cross-subsidy reduction approved by the Commission: 15%
- Basic customer charge increase proposed: $4.47 (45.1%)
- Basic customer charge increase approved: $2.29 (23.1%)

- Docket No. E-7, Sub 1146
- Filed 8/25/2017
- Permanent Rates effective 8/1/2018
- Percentage of interclass cross-subsidy reduction proposed by the Company: 25%
- Percentage of interclass cross-subsidy reduction approved by the Commission: 25%
- Basic customer charge increase proposed: $5.99 (50.76%)
- Basic customer charge increase approved: $2.20 (18.64%)

- Docket No. E-7 Sub 1214
- Filed 9/30/2019
- Permanent Rates effective 6/1/2021
- Percentage of interclass cross-subsidy reduction proposed by the Company: 25%
- Percentage of interclass cross-subsidy reduction approved by the Commission: 25%

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- Basic customer charge increase proposed: $0 (0%)
- Basic customer charge increase approved: $0 (0%)

- Docket E-7 Sub 1276
- Filed 1/19/2023
- Permanent Rates effective: TBD
- Percentage of interclass cross-subsidy reduction proposed by the Company: 10%
- Percentage of interclass cross-subsidy reduction approved by the Commission: TBD
- Basic customer charge increase proposed: $0 (0%)
- Basic customer charge increase approved: TBD

Ex. vol. 13, pp. 46-47.

DEC witness Beveridge testified that the annual interclass cross-subsidies for the base rate year are -$20,117,000 for the residential class, meaning the residential class is being subsidized by other customer classes in the amount of $20,117,000 for the base rate year; $54,359,000 for the general service class, meaning the general service class is subsidizing other customer classes in the amount of $54,359,000 for the base rate year; - $84,682,000 for the lighting class, meaning the lighting class is being subsidized by other customer classes in the amount of $84,682,000 for the base rate year; -$5,200,000 for the industrial class, meaning the industrial class is being subsidized by other customer classes in the amount of $5,200,000 for the base rate year; and $55,640,000 for the OPT class, meaning the OPT class is subsidizing other customer classes in the amount of $55,640,000 for the base rate year. *See* Tr. vol. 10, p. 246. Focusing solely on the residential, General Service, and OPT rate classes, the Company's proposed revenue apportionment in this rate case fails to allocate the Company's revenue requirement to customer classes in a manner consistent with the cost causation principle as defined by G.S. 62-133.16(a)(1). In addition, the Company's proposed revenue apportionment fails to comply with the requirement that interclass cross-subsidies be minimized to the greatest extent practicable by the conclusion of the MYRP.

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	Compliance Filing - Sub 1214 rate case (*before enactment of G.S. 62-133.16(b)*)	Base Rate Year (*after enactment of G.S. 62-133.16(b)*)	Rate Year 1 (*after enactment of G.S. 62-133.16(b)*)	Rate Year 2 (*after enactment of G.S. 62-133.16(b)*)	Rate Year 3 (*after enactment of G.S. 62-133.16(b)*)
Residential	($2,176,000)	($20,117,000)	($37,074,000)	($32,343,000)	($39,177,000)
General Service	$38,804,000	$54,359,000	$29,887,000	$67,634,000	$63,065,000
OPT	($38,522,000)	$55,640,000	$105,479,000	$36,525,000	$46,049,000

See id. at 246-48; Ex. vol. 11, p. 627. It is also worth noting that in all pertinent years reflected in evidence, the general service class is above the upper end of the band of reasonableness for purposes of evaluating customer class rates of return. *See* Tr. vol. 10, pp. 266-67.

The Company's interpretation of G.S. 62-133.16 conflates the statute's mandatory requirements for approval of a PBR application with permissible criteria that the Commission must consider but, importantly, which are not dispositive. This interpretation garbles mandatory conditions limiting the Commission's statutory authority with permissive, discretionary factors the Commission must merely consider in ruling on a PBR application. The Commission is "authorized to approve" a PBR application, but only if it "allocates the electric public utility's total revenue requirement among customer classes based upon the cost causation principle" and "interclass subsidization of ratepayers is minimized to the greatest extent practicable by the conclusion of the MYRP period." G.S. 62-133.16(b). The Company, on the other hand, suggests that the constraints limiting the Commission's authority to approve a PBR application set forth in G.S. 62-133.16(b) should be balanced against the discretionary factors the Commission is merely required to consider pursuant to G.S. 62-133.16(d). This is a

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misapprehension of controlling law and is erroneous as a matter of law.

The Public Staff, for its part, has not made a recommendation regarding revenue apportionment. Therefore, CIGFUR III is unable to respond and reserves its right to request any and all relief available to it if and when the Public Staff subsequently files supplemental testimony on the issue of revenue apportionment (or any other issue).

B. The PBR Statute does not apply to the fuel rider.

Public Staff witness Lucas testified that the Public Staff's recommendation to eliminate the equal percentage increase or decrease method for allocating fuel and fuel-related costs recovered through the fuel rider is based on the requirement contained in G.S. 62-133.16(b) to minimize interclass cross-subsidization to the greatest extent practicable. The Public Staff's motivation, however, is misplaced and unsupported by the PBR Statute. Indeed, G.S. 62-133.16(g) provides that

> Nothing in this section shall be construed to (i) limit or abrogate the existing rate-making authority of the Commission or (ii) invalidate or void any rates approved by the Commission prior to the effective date of this section. In all respects, the alternative rate-making mechanisms, designs, plans, or settlements shall operate independently, and be considered separately, from riders or other cost recovery mechanisms otherwise allowed by law, unless otherwise incorporated into such plan

(emphasis added). Based upon a plain reading of the PBR Statute in its entirety, the provisions set forth in 62-133.16(b) do not apply to the fuel rider, because G.S. 62-133.16(g) makes it clear that the fuel rider operates independently and must be considered separately from the Company's PBR application.

C. Even if the Commission concludes that the PBR Statute applies to the fuel rider, the Public Staff's recommendation to eliminate the equal percentage increase or decrease method of allocating fuel and fuel-related costs should be rejected.

It would constitute an absurd result if the purported interclass cross-subsidy the Public Staff alleges is caused by the equal percentage method of allocating fuel and non-

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fuel (i.e., "fuel-related") costs was eliminated in the name of compliance with G.S. 62-133.16(b) (which does not even apply to the Fuel Rider), while the same customer classes that purportedly benefit from the equal percentage allocation methodology are simultaneously and substantially subsidizing other customer-classes in base rates. If cost allocation of fuel and non-fuel (i.e., "fuel-related") costs should be re-evaluated at some point in the future, that issue is more appropriately considered at the earlier of either: (1) the end of the MYRP period; or (2) the time at which non-fuel costs are no longer recovered through the fuel rider on an energy (i.e., cents per kWh) basis. If base rates are in fact at parity by the conclusion of the MYRP period (unlikely considering the Company is only recommending a 10% reduction in the interclass subsidy existing in base rates,[1] and it is unclear at present what exactly the Public Staff is recommending in terms of proposed revenue apportionment and interclass cross-subsidy reduction), then this issue would potentially warrant reconsideration by the Commission at that time. In the meantime, eliminating the equal percentage method of allocating fuel and fuel-related costs would do nothing to minimize to the greatest extent practicable the substantial interclass cross-subsidy benefitting residential and lighting customers in base rates; what it would do, however, is exacerbate the net interclass cross-subsidies and worsen affordability challenges affecting non-residential customers by causing them to disproportionately bear the brunt of fuel and non-fuel (i.e., "fuel-related) costs recovered through the fuel rider on an energy (cents per kWh) basis. DEC witness Beveridge conceded on cross-examination that DEC's proposed revenue apportionment assumes continued use of the equal percentage method of allocating fuel and non-fuel (i.e., "fuel-related") costs. Tr. vol. 10,

[1] DEC witness Beveridge testified that "the present rates of return are 5.9 percent for the residential class, 7.4 percent for the general service class, 0.1 percent for the lighting class, 5.4 percent for the industrial class, 7.0 percent for the OPT class, for an average NC retail of 6.0 percent." Tr. vol. 10, p. 245.

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p. 257. Witness Beveridge further testified that the Company has not calculated what the total rate increases would be to the customer classes in the absence of the equal percentage method of allocating fuel costs. *See id.*

It would be inappropriate and constitute impermissible single-issue ratemaking if the Commission was to eliminate the equal percentage increase or decrease method of allocating fuel and non-fuel (fuel-related) costs because it seeks to address a purported "cross-subsidy" from other customer classes to certain non-residential classes of customers, while simultaneously ignoring the substantial subsidy in base rates being provided by those same non-residential customers to other classes of customers.

D. The CAP, as proposed, would sever the link between usage and the electric bill and, therefore, would not be based on cost causation principles in violation of G.S. 62-133.16(a)(1) and (b).

The Company's proposed Customer Assistance Program (CAP) is, by definition, a ratepayer-funded program that functions as both an intraclass and interclass cross-subsidy for the benefit of the Company's qualifying low-income customers. DEC Witnesses Beveridge and Barnes also conceded that the exclusive beneficiaries of the new CAP program would be qualifying low-income residential customers, whereas the costs of the CAP program will be spread among all customers and customer classes (except the lighting class). *See* Tr. vol. 10, pp. 261-62; Tr. vol. 11, p. 85. The problem is that the Commission lacks the specific statutory authority to approve low-income rates for electric customers specifically. The parties to the Affordability Stipulation acknowledged the open question pertaining to the legality of the CAP Program as proposed. *See id.* at 86, 99.

In addition, the Company proposed the CAP Program despite the fact that other proposals were submitted to the Low-Income Affordability Collaborative (LIAC) that would not have resulted in a ratepayer-funded low-income assistance program. *See id.* at 89-90.

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Moreover, it is unclear how, if at all, individual customers would change their consumption habits from a CAP bill credit. Assuming a rational economic actor, paying below cost will lead to higher electricity consumption. DEC witness Harris conceded that as currently contemplated, the tracking metrics the Company plans to report to the Commission associated with the CAP Program do not include data or analysis to indicate how, if at all, a customer's usage changes as a result of receiving the CAP bill credit benefits. *See id.* at 128-30. As a result, the Cap Program fails to comply with cost causation principles and therefore, violates G.S. 62-133.16(a)(1) and (b).

E. Affordability challenges for the Company's non-residential customers deserve significantly more attention and proposed solutions.

Instead of proposing low rates all customers can afford to pay, the Company in this case focused extensively on affordability programs and solutions for its low-income residential customers. Indeed, a significant amount of the Company's case in chief focused on the Company's "Affordability Ecosystem," which includes a number of program offerings, solutions, and options to help one segment of one customer class afford their electric bills, at the expense and to the exclusion of all other customers and customer classes. This approach fails to acknowledge or reckon with the fact that affordability challenges are not unique to the Company's low-income residential customers. For example, DEC witness Beveridge conceded on cross-examination that DEC is "not particularly, or broadly, at least, concerned with rate shock to the OPT class." Tr. vol. 10, p. 254.

Contrary to the requirements set forth in N.C.G.S. § 62-133.16(b), the Company and the Public Staff have taken every opportunity in this rate case to ensure that the Company's residential customers—particularly its low-income residential customers—continue to be subsidized by non-residential customers to a degree never before experienced in North Carolina. To add insult to injury for the Company's non-residential customers, this is

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compounded on top of the cost-based rate increase those non-residential customer classes are being asked to absorb due to the Company's MYRP. Indeed, much of this assistance for residential customers comes, in part, at the expense of the Company's non-residential customers, despite it being contrary to cost-causation principles. The evidence in the record of this rate case is replete with countless examples of the ways in which residential the Company's customers, or at least a subset of residential customers, are receiving assistance that artificially deflates residential electric rates (while artificially inflating other customers' rates) and fails to adhere to cost causation principles as required by the PBR Statute.

Although residential customers receive significantly more focus and attention in the affordability conversation, they are not the only customers struggling to afford their electric bills at present, and certainly not the only customers who will struggle even more with each Rate Year's anticipated increase in DEC's MYRP.

III. CONCLUSION

CIGFUR III appreciates the Commission's consideration of this Post-Hearing Brief as the Commission decides the contested issues in DEC's first-ever PBR rate case. CIGFUR III respectfully reserves the right to supplement this Post-Hearing Brief and/or to file a Partial Proposed Order and/or seek any other relief available to it if and when the Public Staff files supplemental testimony and/or exhibits in this docket. In addition, CIGFUR III requests that the Commission adopt and incorporate into its final order in this case the Findings of Fact and Evidence & Conclusions contained in DEC's Proposed Order as they relate to the Cost of Service Study Stipulation, the PIMs Stipulation, and the OPT-V Rate Design Stipulation.

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Respectfully submitted, this the 11th day of October, 2023.

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CERTIFICATE OF SERVICE

The undersigned attorney for CIGFUR III hereby certifies that she caused the foregoing *Post-Hearing Brief of CIGFUR III* 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 11th day of October, 2023.

/s/ Christina D. Cress
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