

**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	)	SECOND JOINT MOTION TO
for Adjustment of Rates and Charges	)	STRIKE AND REQUEST
Applicable to Electric Service in North	)	FOR RELIEF
Carolina and Performance Based Regulation	)	

NOW COME Blue Ridge EMC, Haywood EMC, Piedmont EMC, and Rutherford EMC (collectively, Blue Ridge et al.), and the Carolina Industrial Group for Fair Utility Rates III (CIGFUR III or CIGFUR) (together with Blue Ridge et al., Joint Movants), by and through the undersigned counsel, and submit this Second Joint Motion to Strike and Request for Relief (Second Joint Motion) in the above-captioned docket. In support of their Second Joint Motion, Joint Movants respectfully show unto the Commission as follows:

**Procedural Background**

1. Pursuant to N.C. Gen. Stat. § 62-133.16(d)(3), the Commission has 300 days to issue its decision in an electric general rate case with application for performance-based regulation.
2. On February 16, 2023, the Commission issued an order in the above-captioned docket declaring a general rate case, suspending the proposed new rates, establishing the test year period, and advising that an order scheduling hearings and providing public notice would be issued at a later date.

3. Calculating 300 days from February 16, 2023, the Commission has until Wednesday, December 13, 2023, to issue its final decision in the instant general rate case.
4. On March 16, 2023, the Commission issued an Order Scheduling Investigation and Hearings, Establishing Intervention and Testimony Due Dates and Discovery Guidelines, and Requiring Public Notice (Scheduling Order).
5. In its Scheduling Order, the Commission directed, in pertinent part, “[t]hat the direct testimony and exhibits of intervenors and the Public Staff shall be filed on or before Wednesday, July 19, 2023[.]” Scheduling Order, at Ordering Paragraph 14.
6. On July 19, 2023, Public Staff witness David Williamson (witness D. Williamson or D. Williamson) caused to be pre-filed in the above-captioned docket his direct testimony. Witness D. Williamson’s direct testimony did not contain the Public Staff’s recommendations regarding the issue of revenue apportionment among the retail customer classes in the pending general rate case filed by Duke Energy Carolinas, LLC (DEC or Company). Rather, witness D. Williamson testified in his direct testimony that: “In supplemental testimony, I will illustrate the impacts associated with revenue apportionment and rate design based on the Public Staff’s proposed revenue requirement in this proceeding.” Tr. vol. 13, p. 42.
7. On August 1, 2023, the Public Staff filed a letter in the above-captioned docket, indicating in pertinent part as follows:

The Public Staff, therefore, hereby notifies the Commission, DEC, and other parties in this docket that it anticipates filing its supplemental testimony, addressing both the May 2023 and June 2023 updates, as soon as possible, but no sooner than the start of the hearing on August 28, 2023.

8. On August 21, 2023, a Commission Staff Attorney emailed counsel for all parties for the purpose of scheduling a pre-hearing conference call. A true and accurate copy of that email was identified as Attachment A and attached to Joint Movants' Motion to Strike and Request for Relief filed in this docket on October 17, 2023 (First Joint Motion).
9. A pre-hearing conference call was in fact held at 4 p.m. on Wednesday, August 23, 2023.
10. During the August 23, 2023 pre-hearing conference call, the Commission Staff Attorney informed counsel for all parties that, among other things, the Commission expected any supplemental testimony proffered by the parties to be pre-filed in the docket *before* the witness filing such supplemental testimony took the witness stand during the evidentiary hearing held in the above-captioned matter.
11. The evidentiary hearing in this matter was held beginning on Monday, August 28, 2023, and concluding on Tuesday, September 5, 2023.
12. When witness D. Williamson took the witness stand on August 31, 2023, he had not at that time caused any supplemental testimony to be pre-filed in this docket.

13. This issue was brought to the Presiding Commissioner's attention before witness D. Williamson was cross-examined on August 31, 2023:

MS. CRESS: Yes. Commissioner Duffley, Blue Ridge does have a procedural and evidentiary matter to bring to the Commission's attention now that Mr. Williamson's direct testimony has been entered into the record.

COMMISSIONER DUFFLEY: Please, proceed.

MS. CRESS: Thank you. Mr. Williamson indicated in his direct testimony his intent to file supplemental testimony with respect to the issue of revenue apportionment, and the Public Staff's recommendations regarding how the final revenue requirement in this rate case will be apportioned among the retail customer classes.

Blue Ridge reserved time to cross-examine this witness regarding those anticipated recommendations, which based on the prehearing conference, we understood from Commission staff that it was the Commission's expectation that a witness's testimony be filed in advance of the witness taking the stand. As we sit here today, it is my understanding, unless something has changed in the Docket that I'm not aware of, that Mr. Williamson has still not filed that supplemental testimony containing those recommendations regarding the revenue apportionment issue. And it's further my understanding that he intends to do so as part of the supplemental filings that the Public Staff has indicated on the record they will be making in mid-October.

And, with all due respect, Blue Ridge takes the position that that is unfair to allow one party to basically have the last word after all of the other parties' witnesses have already been excused and all of the other evidence has been heard. The other parties have already been litigating this issue throughout the week, this week, and it is – it is essentially allowing one party to play by a different set of rules than the other parties to this case.

And for all of those reasons, Blue Ridge would object to the Public Staff being allowed to file this supplemental testimony on this issue at that late date in mid-October, and is looking to the Commission for guidance on how to proceed today in light of the fact that its cross time was reserved to cross about that one specific issue and that testimony is not in the record.

COMMISSIONER DUFFLEY: Mr. Felling?

MR. FELLING: Thank you, presiding Commissioner Duffley. The Public Staff has been – has made every effort to be as transparent as we can in our plan and updates to the Commission and to the parties along the way on both the difficulties we’ve had with fully auditing the supplemental updates that have been made to the Company’s Application, and the kind of voluminous work that can be involved in that. And recognizing that that is an unusual circumstance that, you know, it puts all parties in a unique position, but this is – our plan has not been a secret. We filed a letter on how to proceed or how we intended to proceed on the Docket on August 1<sup>st</sup>, note with copies to all Intervenors notifying them that we would not be filing supplemental testimony for the parties that needed to do so until during or after the hearing.

We have updated the Commission along the way, even throughout this hearing. We have identified the specific witnesses, including Public Staff witness Williamson, and provided a date certain on when that that testimony would be filed, so –

COMMISSIONER DUFFLEY: And that date certain is?

MR. FELLING: I believe we indicated that that was October 13<sup>th</sup>.

COMMISSIONER DUFFLEY: Okay.

MR. FELLING: I think we gave that update on Tuesday morning at the Commission’s request.

COMMISSIONER DUFFLEY: Correct.

MR. FELLING: And so, I also would note that there's been numerous witnesses who – Public Staff witnesses, who are in the same position as Mr. Williamson, who will be providing supplemental testimony who have already been testified and been released by the Commission, and there hasn't been a similar objection. So, I would note that, you know, to the extent that this objection should have been made earlier, it's now being made just with respect to Mr. Williamson. But, you know, we'll defer – this was also a similar instance that occurred in the DEP rate case hearing where supplemental testimony was filed. So, certainly acknowledge that it's an unusual circumstance, but this is not one that has surprised or should prejudice any party based on kind of the procedure that we've followed along the way. So, I would ask that that motion be denied.

MS. CRESS: May I briefly be –

COMMISSIONER DUFFLEY: Yes.

MS. CRESS: -- heard in response? Thank you.

Just two quick points. The reason why this request or this objection, rather, is being lodged with respect to this witness and not with respect to the Public Staff's other witnesses, who intend to file supplemental testimony, is because this is an issue that does not require completion of the Public Staff's audit or its investigation into the Company's updates for them to file this testimony and take a position on this issue.

In the DEP rate case, they ended up – the Public Staff ended up supporting the methodology that the Company had proper testimony regarding 10 months prior to the testimony being filed as a supplemental filing six weeks after the close of the evidentiary hearing. It required reconvening of the hearing, which I believe that will be a very similar, if not identical, request that would have to be made by the parties in this rate case, but it is our position that that still does not make Blue Ridge or CIGFUR III, for that matter, whole because our – we will not have an opportunity to rebut that evidence through either our own witnesses or other parties' witnesses at that late stage in the game. And it, essentially, gives the Public Staff the final

word, after having seen this issue be litigated during the evidentiary hearing and having the benefit of seeing the parties' proposed orders and briefs, and seeing the arguments that are taken throughout, and for those reasons, it, frankly – I understand everything Mr. Felling said, but it remains that this is a due process issue.

MR. FELLING: Presiding Commissioner –

COMMISSIONER DUFFLEY: I have one question. What CIGFUR witnesses do you still have that haven't been dismissed or released that would be used to rebut Mr. Williamson's testimony?

MS. CRESS: Well, respectfully, if Mr. Williamson is going to be allowed to file supplemental testimony, then CIGFUR III does intend to request an opportunity to have our witness, who has previously filed testimony on this same issue, be heard at the same time that cross examination of Mr. Williamson, as to that supplemental testimony, occurs.

COMMISSIONER DUFFLEY: Okay. Mr. Felling?

MR. FELLING: Thank you, presiding Commissioner Duffley. Just to clarify a few things there. The Public Staff has never issued a recommended revenue apportionment or recommended rates before we had the recommended revenue requirement. And so, in the DEP case, the agreement that Ms. Cress referenced that we came to with the Company occurred after we had already reached our recommended revenue requirement, which we have not done in this case. So, the notion that the Public Staff can, at this point, propose recommended revenue apportionment and rates is not correct based on Public Staff policy, and that was something that had been addressed. Also, CIGFUR III questioning with the Reed and Byrd panel, I think I elicited some questions about their familiarity with whether the Public Staff had ever had a recommended revenue apportionment before we had a recommended revenue requirement, which they were not aware of that, any circumstance where we had, so.

COMMISSIONER DUFFLEY: Okay. Thank you. I am not going to make a ruling at this time to the extent

your objection is a motion, but it's my understanding that any of your reserved cross was for the supplemental, and you do not have questions at this time for Mr. Williamson?

MS. CRESS: That's correct. And we would just request that we reserve the right to cross-examine on any potential supplemental filings that occur from this witness.

COMMISSIONER DUFFLEY: I note that request.

MS. CRESS: Thank you. Moving on, then, I believe I'm also next up on the list for CIGFUR III.

COMMISSIONER DUFFLEY: Correct. You may proceed.

MS. CRESS: Thank you. And just for the record, CIGFUR III does join Blue Ridge in the objections that were just lodged, which I will not repeat.

COMMISSIONER DUFFLEY: Duly noted.

MS. CRESS: Thank you.

Tr. vol. 13, pp. 68-76.

14. At the conclusion of witness D. Williamson's live testimony on August 31, 2023, Presiding Commissioner Duffley stated "Mr. Williamson, you may step down for now." *Id.* at 99.
15. On the last day of the evidentiary hearing, Presiding Commissioner Duffley stated:

Lastly, it's my understanding that the Public Staff intends to file supplemental testimony and schedules of Witnesses Boswell and Zhang, D. Williamson, McLawhorn, Metz, Thomas, T. Williamson and Michna resolving DEC's May and June updates by October 13<sup>th</sup>, 2023. We will hold the record open for the purpose of receiving the late-filed exhibits that have been requested by the Commissioners and the supplemental testimony



and schedules of the Public Staff on DEC's May and June updates.

We will provide all of you with additional time to update your proposed Orders or provide supplemental proposed Orders on the items or matters addressed in supplemental testimony. The date for the proposed Orders will not be extended due to this additional supplemental testimony or late-filed exhibits.

And with that, unless there any questions, this hearing is adjourned for now.

Tr. vol. 16, pp. 422-23.

16. On October 11, 2023, the parties filed Proposed Orders and Briefs (POBs) in the above-captioned docket. In particular, CIGFUR III filed a post-hearing brief raising arguments addressing the issue of revenue apportionment, based on the related evidence properly before the Commission at that time. In addition, Blue Ridge et al. filed a letter in lieu of POBs, indicating that it had an opportunity to review CIGFUR III's post-hearing brief and joined CIGFUR III in the arguments it raised in its post-hearing brief regarding the revenue apportionment issue and related evidence properly before the Commission at that time.
17. On October 13, 2023—47 days after the evidentiary hearing in the above-captioned proceeding began—witness D. Williamson caused to be filed in this docket his Supplemental Testimony and Exhibits (D. Williamson Supplemental Testimony), providing for the first time in this docket the Public Staff's recommended revenue apportionment among the Company's retail customer classes.

18. On October 16, 2023—the first business day after the filing of the D. Williamson Supplemental Testimony—CIGFUR III served its First Data Request of CIGFUR III to Public Staff. A true and accurate copy of the First Data Request of CIGFUR III to Public Staff is identified and attached hereto as Attachment A.
19. As of the time of the filing of this Second Joint Motion to Strike, CIGFUR III has not to date received responses to its First Data Request of CIGFUR III to Public Staff.
20. On October 17, 2023, Joint Movants filed their First Joint Motion, moving to strike the D. Williamson Supplemental Testimony and alternatively requesting procedural relief if the Commission denies the First Joint Motion. Joint Movants hereby incorporate by reference hereto their First Joint Motion, in its entirety.
21. Also on October 17, 2023, a Commission Staff Attorney emailed counsel for all parties and indicated that Joint Movants' First Joint Motion "is under consideration; however, if the Commission decides it is necessary to reconvene the hearing, we are holding **Monday, October 30 at 1 p.m.** for this purpose" (emphasis in original). A true and accurate copy of said email is identified and attached hereto as Attachment B.
22. After 5 p.m. ET on Friday, October 20, 2023—54 days after the evidentiary hearing in the above-captioned proceeding began and 7 days after the filing of the D. Williamson Supplemental Testimony in this proceeding—the Public Staff served a copy of witness D. Williamson's "Errata Sheet and

Corrected Supplemental Exhibits” (D. Williamson Corrected Supplemental Exhibits), which *materially revised* the Public Staff’s recommendations regarding revenue apportionment that witness D. Williamson had previously caused to be pre-filed in this docket for the first time on October 13, 2023. A true and accurate copy of the service email received after 5 p.m. ET on Friday, October 20, 2023, is identified and attached hereto as Attachment C.

**Applicable Commission Rules**

23. In Class A & B electric utility general rate cases, the “Public Staff, Attorney General and all other Intervenors or Protestants shall file all testimony, exhibits and other information which is to be relied upon at the hearing *30 days in advance of the scheduled hearing[.]*” Commission Rule R1-24(g)(2) (emphasis added).
24. Only that expert witness testimony which is “prepared and submitted as provided by [Rule R1-24(g)(2)], may be identified by the witness, offered in evidence, and made a part of the record without further formality or further explanation, and the witness immediately tendered for cross-examination[.]” Rule R1-24(g)(4).
25. Relief from Rule R1-24(g)(4) “may be granted by the Commission, *after notice of hearing and before the date of hearing*, in cases in which it appears by stipulation of counsel for the respective parties that the oral testimony or exhibits of expert witnesses will not be of such technical or complicated nature as to warrant a recess of the hearing for study and preparation of cross-examination.” Rule R1-24(g)(5) (emphasis added).

26. According to Commission Rule R1-5(f), any pleading “may be amended or corrected or any omission supplied *prior to notice of hearing. After notice of hearing, it will be in order to move for leave to amend in accordance with Rule R1-7.*” Rule R1-5(f) (emphasis added).
27. Commission Rule R1-7(a)(3) provides that motions may be addressed to the Commission “[t]o make additional parties, to strike improper parties, or to substitute parties, *or for leave to amend pleadings.*” Rule R1-7(a)(3) (emphasis added).
28. Commission Rule R1-17(c) provides that:
- Supplemental Data. – The Commission shall consider such relevant, material, and competent evidence as may be offered by any party to the proceeding tending to show *actual changes in costs, revenues, or the cost of the public utility’s property used and useful*, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is closed.
- Information relating to the change(s) referred to above *relied upon by the applicant* shall be filed with the Commission *ten (10) working days prior to the date that the testimony of the Public Staff and other intervenors is due to be filed* to the extent said change(s) are *known by the applicant at that time.*
- To the extent that additional information becomes available subsequent to ten (10) working days prior to the filing of testimony by the Public Staff and other intervenors, such information which will be offered to support change(s) shall be made available to the Commission and other parties as soon as practicable. *Under such circumstances the Public Staff and other intervenors shall have the right to address said evidence through additional direct testimony, such option to be exercised at the discretion of the Public Staff and other intervenors.*
- (emphasis added).

**Public Staff's Failure to Comply with  
Commission Rules, Practice, and Procedure**

29. The Public Staff failed to comply with the Commission's Scheduling Order issued in this docket by filing the D. Williamson Supplemental Testimony and the D. Williamson Corrected Supplemental Exhibits 87 days and 94 days, respectively, after the deadline set by the Commission for the filing of Public Staff and other intervenor testimony in the instant rate case.
30. The Public Staff failed to comply with Commission Rule R1-24(g)(2) by filing the D. Williamson Supplemental Testimony and the D. Williamson Corrected Supplemental Exhibits 75 days and 82 days, respectively, past the deadline set forth in Commission Rules. Under Rule R1-24(g)(2), the Public Staff was obligated to file "*all* testimony, exhibits and other information which is to be relied upon at the hearing *30 days in advance of the scheduled hearing*" (emphasis added). In other words, to comply with Commission Rules, the D. Williamson Supplemental Testimony and Corrected Supplemental Exhibits should have been filed no later than July 31, 2023.
31. The Public Staff failed to abide Commission staff admonishments provided to counsel for all parties during the pre-hearing conference held in advance of the evidentiary hearing scheduled in this docket, which specifically instructed that all supplemental testimony be filed before each respective witness took the stand to provide live testimony during the evidentiary hearing in this matter. To have abided Commission staff admonishments provided to counsel for all parties during the pre-hearing conference in this

matter, the D. Williamson Supplemental Testimony and D. Williamson Corrected Supplemental Exhibits should have been filed at the absolute latest on or before August 31, 2023, when D. Williamson took the witness stand during the evidentiary hearing in this matter. Instead, the Public Staff filed the D. Williamson Supplemental Testimony and D. Williamson Corrected Supplemental Exhibits 44 days and 51 days, respectively, after the date upon which D. Williamson took the witness stand in this matter.

32. The Public Staff did not first obtain leave from the Commission to file either the D. Williamson Supplemental Testimony or the D. Williamson Corrected Supplemental Exhibits. Rather, instead of properly obtaining leave from the Commission, D. Williamson unilaterally declared in his pre-filed direct testimony that he would be submitting late-filed supplemental testimony. This unilateral declaration was reiterated by counsel for the Public Staff in its August 1, 2023 letter filed in this docket.
33. The Public Staff violated Rules R1-5(f) and R1-7(a)(3) by filing the D. Williamson Corrected Supplemental Exhibits without moving for leave to amend the D. Williamson Corrected Supplemental Exhibits. Moreover, the D. Williamson Corrected Supplemental Exhibits were filed in the absence of corresponding sworn testimony and/or verification and, therefore, the D. Williamson Corrected Supplemental Exhibits are not competent evidence, even assuming for the sake of argument that they are otherwise admissible evidence (which they are not).

34. Rather than comply with the Commission's Scheduling Order, or Commission Staff's admonishments during the pre-hearing conference call, or Commission Rule R1-24(g)(2), the Public Staff unilaterally decided to file the D. Williamson Supplemental Testimony and the D. Williamson Corrected Supplemental Exhibits 47 days and 54 days, respectively, after the expert witness hearing in this matter began.

**The Public Staff Has Failed to Show Good Cause for the Admission of the D. Williamson Supplemental Testimony and the D. Williamson Corrected Supplemental Exhibits**

35. Unlike other late-filed supplemental testimony proffered by the Public Staff in this proceeding, D. Williamson's recommendations regarding revenue apportionment submitted as part of his supplemental testimony did not depend upon the Public Staff's completion of its audit of the Company's summer updates. That the Public Staff has in this rate case adopted a revenue apportionment methodology which is evidently dependent on the total revenue requirement underscores the subjective, arbitrary, and capricious nature of the Public Staff's "guiding principles" and its revenue apportionment methodology, which are apparently subject to change depending on the magnitude of the Company's total revenue requirement.
36. As the Commission has previously noted,

The Commission's orders establishing procedural schedules are critical to the orderly and organized management of matters coming before the Commission. In general, the Commission modifies procedural schedules only when good cause is shown by the party requesting modification and when no prejudice will result to the parties or the proceeding as a result of the

modification. The Commission has allowed the filing of supplemental testimony in limited instances, where the need to file such supplemental testimony is driven by the subject matter of the testimony, such as cost updates in general rate case proceedings or settlement reached by parties prior to evidentiary hearing.

Order Allowing Supplemental and Supplemental Rebuttal Testimony, and Providing for Limited Discovery, Docket No. W-1300, Sub 60, at p. 2 (March 3, 2022) (finding no emergent circumstances justifying supplemental testimony, but nevertheless allowing it given that the parties were working together cooperatively and no other party opposed the relief sought).

37. Instead of requesting leave from the Commission to file out of time, or requesting modification of the Scheduling Order, and in either case deferring to the Commission to make findings that “good cause” had been shown, the Public Staff unilaterally decided to treat the procedural deadlines dictated in this general rate case by Commission Order and Rules—the same procedural deadlines with which all other parties to this docket have had to comply—as mere suggestions or guidelines.

**Prejudice to Joint Movants**

38. Joint Movants will be unduly prejudiced if their First and/or Second Joint Motions to Strike are denied because it is impossible to put Joint Movants in the same position they would have been had the Public Staff timely filed the Supplemental Testimony and Corrected Supplemental Exhibits of D. Williamson.



39. Had the Public Staff filed the Supplemental Testimony and Corrected Supplemental Exhibits of D. Williamson when all other intervenors were required to file testimony on July 19, 2023, Joint Movants would have had **41 days** between the filing of such testimony and the start of the evidentiary hearing in this matter to have conducted multiple rounds of discovery, prepared its strategy for cross-examination of all revenue apportionment witnesses (including those who could have discredited D. Williamson's recommendations and the methodology underlying same through testimony counsel for Joint Movants could have elicited from them during cross-examination), and prepared its strategy with respect to its own expert witness (which would not have involved a request for excusal of CIGFUR III witness Brian C. Collins had D. Williamson's Supplemental Testimony and Corrected Supplemental Exhibits been timely filed).
40. Had the Public Staff filed the Supplemental Testimony and Corrected Supplemental Exhibits of D. Williamson by at least the time frame required under Commission Rule R1-24(g)(2) (i.e., July 31, 2023), Joint Movants would have had **29 days** between the filing of such testimony and the beginning of the evidentiary hearing in this matter to have conducted multiple rounds of discovery, prepared its strategy for cross-examination of all revenue apportionment witnesses (including those who could have discredited D. Williamson's recommendations and the methodology underlying same through testimony counsel for Joint Movants could have elicited from them during cross-examination), and prepared its strategy with

respect to its own expert witness (which would not have involved a request for excusal of CIGFUR III witness Brian C. Collins had D. Williamson's Supplemental Testimony and Corrected Supplemental Exhibits been timely filed).

41. If Joint Movants' First and/or Second Joint Motions are denied and the Commission decides to reconvene the evidentiary hearing in this matter for the purpose of allowing the cross-examination of witness D. Williamson on October 30, 2023, Joint Movants will have had **10 days** between the filing of D. Williamson's Corrected Supplemental Exhibits and D. Williamson taking the witness stand for cross-examination regarding same. Such a truncated amount of time does not allow for multiple rounds of discovery. Perhaps more concerning, it deprives counsel for Joint Movants of their ability to have the benefit of knowing the Public Staff's position on this very important and material issue when developing their cross-examination strategy as to all of the other parties' respective revenue apportionment witnesses. Moreover, it deprives CIGFUR III of its ability to have the benefit of knowing the Public Staff's position on this very important and material issue when developing its strategy in defending its own expert witness on the witness stand.
42. Without the opportunity to cross-examine *all other parties' respective witnesses regarding the revenue apportionment issue* about which D. Williamson seeks to have supplemental testimony (and corrected supplemental exhibits) admitted into the evidentiary record, Joint Movants

would be deprived of the opportunity to mount what could have otherwise been an effective rebuttal case and/or to otherwise discredit D. Williamson's supplemental testimony and corrected supplemental exhibits, both of which are opportunities they would have been afforded had the Public Staff complied with the requisite filing deadlines in this matter and they had the benefit of knowing the Public Staff's recommendations before the evidentiary hearing in this matter began.

43. Without the opportunity to proffer its own supplemental direct testimony and have its own expert witness also appear to provide live testimony on cross-examination, Commissioner questions, and questions on Commissioner questions, CIGFUR III would be deprived of the same opportunity it would otherwise have been afforded to mount a rebuttal case and/or to otherwise discredit D. Williamson's testimony and exhibits.
44. Without the opportunity to be placed in the exact same position as they otherwise would be had the Public Staff complied with the same procedures, rules, and deadlines as other intervenors in this matter, and on the same timeline as what Joint Movants and the other parties to this matter would have experienced had the Public Staff complied with the Commission's Scheduling Order issued in this matter, Joint Movants cannot be put in the same position they would have been in had the Public Staff timely and properly filed D. Williamson's Supplemental Testimony and Corrected Supplemental Exhibits on July 19, 2023. In other words, in the event Joint Movants' First and Second Joint Motions are denied, and

instead their alternative requests for relief are granted in whole or in part, the only way to put Joint Movants in the same position as they otherwise would have been had the Public Staff complied with the Commission's Order, just like all the other parties did, the timeline of the alternative relief should be as follows:

	<b>D. Williamson – Direct Testimony</b>	<b>D. Williamson –Corrected Supplemental Exhibits re: Revenue Apportionment Issue</b>
<b>Date of Filing of PS/Intervenor Testimony</b>	July 19, 2023	October 20, 2023
<b>Date Evidentiary Hearing or Reconvened Hearing Begins/Should Begin</b>	August 28, 2023 (+41 days from date of filing of PS/Intervenor Testimony)	November 30, 2023 (+41 days from date of filing of PS/Intervenor Testimony)
<b>Date Evidentiary Hearing Ends/Should End</b>	September 5, 2023	November 30, 2023
<b>Deadline for Commission to Issue Final Order</b>	December 13, 2023	December 13, 2023
<b>Date of POBs</b>	October 11, 2023 (+37 days from end of hearing on 9/5/23)	January 8, 2024 (+39 days, given that +37 days falls on a Saturday)

45. Obviously, the timeline referenced *supra* is an impossibility, given it would violate the statutory deadline for the Commission issuing a final order in this matter. This is a testament to how extreme the Public Staff's delinquency and non-compliance in this matter is with regard to D. Williamson.
46. Because it would be impossible to put Joint Movants in the same position they would otherwise have been in from a due process perspective, the only

appropriate, proper, and fair resolution to this issue is to strike D. Williamson's supplemental testimony and corrected exhibits in their entirety.

47. To allow the admission into evidence of the supplemental testimony and corrected supplemental exhibits of witness D. Williamson at this extremely late stage in the proceeding would cause incurable prejudice to Joint Movants and other parties who have already fully litigated an issue of great materiality and import: revenue apportionment among retail customer classes.

48. To allow the admission into evidence of the supplemental testimony and exhibits of witness D. Williamson at this late stage in the proceeding would unquestionably violate the due process rights of other parties, including Joint Movants.

49. The North Carolina Supreme Court has repeatedly held that:

The procedural rules of an administrative agency are binding upon the agency which enacts them as well as upon the public.... To be valid, the action of the agency must conform to its rules which are in effect at the time the action is taken, particularly those designed to provide procedural safeguards for fundamental rights.

*Refining Co. v. Board of Aldermen*, 284 N.C. 458, 467-68, 202 S.E.2d 129, 135 (1974); *George v. Town of Edenton*, 294 N.C. 679, 242 S.E.2d 877 (1978).

50. For all these reasons, and in the interests of fairness, due process, avoiding undue prejudice to Joint Movants and other parties, and the orderly and organized management of matters coming before the Commission, the supplemental testimony and corrected supplemental exhibits of witness

D. Williamson filed in the above-captioned docket on October 13, 2023, and October 20, 2023, respectively, should be stricken from the record and should not be considered by the Commission in its deliberations in this matter.

**Request for Relief in the Alternative**

51. The prejudice and due process implications that would be caused by allowing witness D. Williamson's supplemental testimony and corrected supplemental exhibits into the record at this very late stage in the proceeding, particularly under these circumstances, is likely incurable and indefensible. However, in the event the Commission is inclined to deny Joint Movants' motion to strike, Joint Movants respectfully request the following relief in the alternative:
- a. The opportunity to conduct at least 25 days' worth of additional discovery;
  - b. The opportunity to present rebuttal evidence by way of leave to allow Joint Movants and all other parties to file supplemental rebuttal testimony;
  - c. Reconvening of the evidentiary hearing in this matter to allow for cross-examination of D. Williamson **and cross-examination of all other parties' revenue apportionment witnesses** no sooner than November 20, 2023;
  - d. The opportunity to supplement previously-filed proposed orders and briefs at least 10 days after the close of any reconvened hearing; and

- e. For any such other and further relief as the Commission may deem just and proper.

WHEREFORE, Joint Movants respectfully pray for the following relief:

- I. That their Second Joint Motion to Strike, together with their First Joint Motion to Strike, be granted;
- II. That in the event Joint Movants' First and/or Second Joint Motions to Strike are denied, CIGFUR respectfully requests the alternative relief set forth in both Joint Motions; and
- III. For such other and further relief as the Commission may deem just and appropriate.

Respectfully submitted, this the 23rd day of October, 2023.

**BAILEY & DIXON, LLP**

/s/ Christina D. Cress  
Christina D. Cress  
N.C. State Bar No. 45963  
434 Fayetteville St., Ste. 2500  
P.O. Box 1351 (zip 27602)  
Raleigh, NC 27601  
(919) 607-6055  
[ccress@bdixon.com](mailto:ccress@bdixon.com)

*Attorneys for CIGFUR III and  
Blue Ridge et al.*

**CERTIFICATE OF SERVICE**

The undersigned attorney for CIGFUR III and Blue Ridge et al. hereby certifies that she caused the foregoing *Second Joint Motion to Strike and Request for Relief* 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 23<sup>rd</sup> day of October, 2023.

/s/ Christina D. Cress  
Christina D. Cress



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	)	FIRST DATA REQUEST
For Adjustment of Rates and Charges	)	OF CIGFUR III TO PUBLIC
Applicable to Electric Service in North	)	STAFF
Carolina and Performance Based Regulation	)	

INSTRUCTIONS

1. If you object to part of a data request and refuse to respond to that part, state the objection and answer the remaining portion of that data request.
2. In producing documents or data pursuant to a request, please indicate the specific request in response to which the documents or data is being produced.
3. When a data request asks for specific information, such as a date or an amount, and the specific information requested is not known to you, such data request shall be deemed to ask you to approximate the information requested as best you can, provided that you indicate in your response that the information being provided is an approximation or is incomplete in certain specific respects.
4. When, after a reasonable and thorough investigation using due diligence, you are unable to answer any part of a data request because of lack of information available to you, specify in full and complete detail the type of information which you claim is not available to you and what has been done by you to locate such information. In addition, specify what knowledge or belief you have concerning the unanswered portion of the data request, set forth the facts upon which such knowledge or belief is based, and identify the person(s) who has or is likely to have the information which you claim is not available.
5. "DEC" or the "Company" as used herein shall mean Duke Energy Carolinas, LLC.
6. With respect to any information called for by a data request that you withhold on a claim of privilege or protection, please provide as to each:

- a. The claimed basis for withholding the information;
  - b. The nature of the information withheld; and
  - c. A statement of all the circumstances relied upon to support such a claim.
7. With respect to any document that you withhold on a claim of privilege or immunity, please provide a privilege log that specifies as to each document:
  - a. The identity of the sender(s) of the document;
  - b. The identity of the author(s) of the document;
  - c. The identity of the recipient(s) of the document;
  - d. The job title of every person named in subparts a. through c. above;
  - e. The date or approximate date of the document;
  - f. A general description of the nature and subject matter of the document;
  - g. The identity of the person who has custody of the document; and
  - h. The basis for your claim of privilege or protection.
8. These data requests shall be deemed continuing in nature so as to require supplemental answers between the time initial responses are served and the time the Commission issues its final order (including any appeals) in this proceeding.
9. Documents responsive to the following data requests are to be produced electronically via electronic correspondence to [cress@bdixon.com](mailto:cress@bdixon.com) and [dconant@bdixon.com](mailto:dconant@bdixon.com) on behalf of CIGFUR III's counsel, the law firm of Bailey & Dixon, LLP, 434 Fayetteville Street, Suite 2500, Raleigh, NC 27601.
10. For each data request, provide the name and title of the person(s) responding to the request.

#### DATA REQUESTS

- 1-1. Please provide all workpapers associated with Exhibits 1 and 2 for David M. Williamson's Supplemental Testimony filed on October 13, 2023 in native electronic format with all formulas intact.

#### **RESPONSE:**

- 1-2. To the extent not already provided, please provide all Public Staff's cost of service models in native electronic format with all formulas intact and their outputs that support Exhibits 1 and 2.

**RESPONSE:**

- 1-3. Please explain in detail how the Public Staff cost of service models were developed that support Exhibits 1 and 2.

A. For example, did Public Staff modify DEC's cost of service models to develop its own models? If so, please describe all modifications made by Public Staff to the Company's models.

**RESPONSE:**

- 1-4. Please provide a complete explanation of all the changes in approach to revenue distribution to classes from the Company's proposed revenue distribution.

**RESPONSE:**

- 1-5. Explain the extent to which the Public Staff modified its approach to revenue apportionment as compared to Duke's 10% subsidy reduction method.

**RESPONSE:**

- 1-6. Regarding Exhibit 1, please describe in detail all "Staff Adjustments" to the MAE Cost of Service Methodology as noted on the exhibit.

**RESPONSE:**

- 1-7. Provide all studies, reports or written communication done by or for the Public Staff that relates the four guiding rate principles contained in the Williamson testimony to the HB 951 law.

**RESPONSE:**

- 1-8. Provide all reports, studies and any documentation prepared by Public Staff or on its behalf that reviews how the principles set forth by Mr. Williamson associated with revenue apportionment comply with HB 951.

**RESPONSE:**

- 1-9. Provide the subsidy level paid/received by each class that corresponds to Mr. Williamson's recommendations in Exhibits 1 and 2.

**RESPONSE:**

- 1-10. Please reconcile the differences in Public Staff's cost of service results and those of the Company. In particular, please explain why Public Staff's cost of service results indicate that the OPT class is producing a rate of return at current rates that is below the system average rate of return.

**RESPONSE:**

- 1-11. Please explain in detail why under the Staff's class revenue distribution, the OPT class receives an above system average increase under Public Staff's recommendations in Exhibits 1 and 2.

**RESPONSE:**

- 1-12. At page 4, lines 15-22 of his Supplemental Testimony, Mr. Williamson states the following:

I utilized the Company's E-1, Item 45A, which is the per books MAE COSS, to develop a distribution framework that incorporates the overall base revenues, expenses, net income, and rate base for the test year. I applied this framework to the adjusted present and proposed revenues, expenses, and rate base provided by Public Staff witnesses Zhang, Boswell, and Metz, to develop the Public Staff's recommended revenue changes by retail rate class for each Rate Year of the multi-year rate plan (MYRP).

Please provide the following information:

- a. Please explain in detail why Mr. Williamson utilized the per books MAE COSS to develop his "distribution framework".

- b. Is it Mr. Williamson's understanding that DEC utilized the per books MAE COSS to develop its proposed class revenue distribution? Please explain in detail.
- c. Did Mr. Williamson make any adjustments to the Company's per books MAE COSS when developing his "distribution framework" and measuring each class's cost of service? Please describe all adjustments made by Public Staff to the per books MAE COSS results when developing its class revenue distribution.
- d. Please explain in detail how the "distribution framework" was developed by Mr. Williamson.
- e. Did Mr. Williamson develop a distribution framework for the subclasses of OPT? If yes, please provide the Public Staff's recommended revenue distribution for the OPT subclasses. If no, please explain why not.
- f. Did the development of Mr. Williamson's "distribution framework" include developing an actual cost of service model to be used in his "distribution framework"? Please explain in detail.

**RESPONSE:**

- 1-13. At page 7 lines 15-17 of his Supplemental Testimony, Mr. Williamson states the following:

The revenue apportionment illustrated in my exhibits shows a reasonable level of progress toward achieving all the guiding principles, without introducing the risk of rate shock.

Please provide the following information:

- a. Please explain in detail how Mr. Williamson measured a reasonable level of progress was made towards Public Staff's guiding principles.
- b. In this instance, how did Mr. Williamson define rate shock? Please explain in detail.

**RESPONSE:**

- 1-14. Regarding Exhibits 1 and 2, please provide Mr. Williamsons' results for all subclasses, including those results for the subclasses of the OPT class.

**RESPONSE:**

This the 16<sup>th</sup> day of October, 2023.

**BAILEY & DIXON, LLP**

By: /s/ Douglas E. Conant  
Douglas E. Conant  
434 Fayetteville St., Ste. 2500  
Post Office Box 1351 (zip 27602)  
Raleigh, NC 27601  
(919) 810-3145  
[dconant@bdixon.com](mailto:dconant@bdixon.com)

*Attorneys for CIGFUR III*

CERTIFICATE OF SERVICE

The undersigned attorney for CIGFUR III hereby certifies that he served the foregoing CIGFUR III's First Data Request upon Public Staff upon counsel for Public Staff by electronic mail.

This the 16<sup>th</sup> day of October, 2023.

By: /s/ Douglas E. Conant  
Douglas E. Conant

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Oct 23 2023

**From:** [Hicks, Warren](#)  
**To:** [Snowden, Benjamin L.](#); [Dodge, Tim R](#); [michael.youth@ncemcs.com](mailto:michael.youth@ncemcs.com); [Charles Bayless](#); [mdq@lewis-roberts.com](mailto:mdq@lewis-roberts.com); [Marcus W. Trathen](#); [John Burns](#); [kboehm@bkllawfirm.com](mailto:kboehm@bkllawfirm.com); [jkyler@bkllawfirm.com](mailto:jkyler@bkllawfirm.com); [benroyster@roysterlaw.com](mailto:benroyster@roysterlaw.com); [David Neal](#); [mmagarira@selcnc.org](mailto:mmagarira@selcnc.org); [tgooding@selcnc.org](mailto:tgooding@selcnc.org); [Cathy Cralle Jones](#); [Andrea Bonvecchio](#); [aj@jenkinsatlaw.com](mailto:aj@jenkinsatlaw.com); [brian.beverly@youngmoorelaw.com](mailto:brian.beverly@youngmoorelaw.com); [temoore@ncdoj.gov](mailto:temoore@ncdoj.gov); [Christina Cress](#); [Jeffries, James H. IV](#); [Athens, Kristin M.](#); [jack.jirack@duke-energy.com](mailto:jack.jirack@duke-energy.com); [Butler, Melissa O](#); [Jagannathan, Molly McIntosh](#); [dmertz@ncdoj.gov](mailto:dmertz@ncdoj.gov); [csedwards@wardandsmith.com](mailto:csedwards@wardandsmith.com); [Conant, Douglas](#); [Ethan Blumenthal](#); [Luhr, Nadia](#); [Josey, Robert](#); [Edmondson, Lucy](#)  
**Cc:** [Hicks, Warren](#)  
**Subject:** RE: E-7, Sub 1276: Blue Ridge et al and CIGFUR III 's Joint Motion to Strike and Request for Procedural Relief  
**Date:** Tuesday, October 17, 2023 4:12:29 PM  
**Attachments:** [image001.png](#)  
**Importance:** High

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Also, Blue Ridge et al. and CIGFUR III 's Joint Motion to Strike and Request for Procedural Relief is under consideration; however, if the Commission decides it is necessary to reconvene the hearing, we are holding **Monday, October 30 at 1 p.m.** for this purpose.

Warren Hicks  
Staff Attorney  
North Carolina Utilities Commission  
Office: (919) 268-7436  
4325 Mail Service Center  
Raleigh, NC 27699  
[www.ncuc.net](http://www.ncuc.net)



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**From:** Hicks, Warren <[whicks@ncuc.net](mailto:whicks@ncuc.net)>  
**Sent:** Tuesday, October 17, 2023 3:57 PM  
**To:** Snowden, Benjamin L. <[BSnowden@foxrothschild.com](mailto:BSnowden@foxrothschild.com)>; Dodge, Tim R <[tim.dodge@psncuc.nc.gov](mailto:tim.dodge@psncuc.nc.gov)>; [michael.youth@ncemcs.com](mailto:michael.youth@ncemcs.com); Charles Bayless <[charlie.bayless@ncemcs.com](mailto:charlie.bayless@ncemcs.com)>; [mdq@lewis-roberts.com](mailto:mdq@lewis-roberts.com); Marcus W. Trathen <[MTRATHEN@brookspierce.com](mailto:MTRATHEN@brookspierce.com)>; John Burns <[counsel@carolinasceba.com](mailto:counsel@carolinasceba.com)>; [kboehm@bkllawfirm.com](mailto:kboehm@bkllawfirm.com); [jkyler@bkllawfirm.com](mailto:jkyler@bkllawfirm.com); [benroyster@roysterlaw.com](mailto:benroyster@roysterlaw.com); David Neal <[dneal@selcnc.org](mailto:dneal@selcnc.org)>; [mmagarira@selcnc.org](mailto:mmagarira@selcnc.org); [tgooding@selcnc.org](mailto:tgooding@selcnc.org); Cathy Cralle Jones <[cathy@attybryanbrice.com](mailto:cathy@attybryanbrice.com)>; Andrea Bonvecchio <[andrea@attybryanbrice.com](mailto:andrea@attybryanbrice.com)>; [aj@jenkinsatlaw.com](mailto:aj@jenkinsatlaw.com); [brian.beverly@youngmoorelaw.com](mailto:brian.beverly@youngmoorelaw.com); [temoore@ncdoj.gov](mailto:temoore@ncdoj.gov); Christina Cress <[ccress@bdixon.com](mailto:ccress@bdixon.com)>; Jeffries, James H. IV <[JJeffries@mcguirewoods.com](mailto:JJeffries@mcguirewoods.com)>; Athens, Kristin M. <[KAthens@mcguirewoods.com](mailto:KAthens@mcguirewoods.com)>; Jack Jirack ([jack.jirack@duke-energy.com](mailto:jack.jirack@duke-energy.com)) <[jack.jirack@duke-energy.com](mailto:jack.jirack@duke-energy.com)>; Butler, Melissa O <[Melissa.Butler2@duke-energy.com](mailto:Melissa.Butler2@duke-energy.com)>; Jagannathan, Molly McIntosh <[molly.jagannathan@troutman.com](mailto:molly.jagannathan@troutman.com)>; [dmertz@ncdoj.gov](mailto:dmertz@ncdoj.gov); [csedwards@wardandsmith.com](mailto:csedwards@wardandsmith.com); Conant,



Douglas <dconant@bdixon.com>; Ethan Blumenthal <ethan@energync.org>; Luhr, Nadia <Nadia.Luhr@psncuc.nc.gov>; Josey, Robert <Robert.Josey@psncuc.nc.gov>; Edmondson, Lucy <lucy.edmondson@psncuc.nc.gov>

**Cc:** Hicks, Warren <whicks@ncuc.net>

**Subject:** E-7, Sub 1276: Blue Ridge et al and CIGFUR III 's Joint Motion to Strike and Request for Procedural Relief

**Importance:** High

Please let me know if (and, if so, when) you intend to (1) file a response to Blue Ridge et al. and CIGFUR III 's Joint Motion to Strike and Request for Procedural Relief or (2) respond to the October 13 supplemental filings.

I will infer no response to indicate that you do **not** intend to respond to either.

Thanks!

Warren Hicks  
Staff Attorney  
North Carolina Utilities Commission  
Office: (919) 268-7436  
4325 Mail Service Center  
Raleigh, NC 27699  
[www.ncuc.net](http://www.ncuc.net)



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**From:** [Jones, Erica S](#)  
**To:** [Heironimus, Jessica](#); ["Justin T. Somelofske"](#); ["Ethan S. Blumenthal"](#); ["Athens, Kristin M."](#); ["Munashe Magarira"](#); [Rose Williams](#); [Christina Cress](#); ["Jody Kyler Cohn"](#); ["Brett Breitschwerdt"](#); ["Butler, Melissa O"](#); ["Marcus Trathen"](#); ["mdq@lewis-roberts.com"](#); ["Kaylor, Robert W"](#); ["Kendrick C. Fentress"](#); [michael.youth](#); ["Ben Royster"](#); ["Brian O. Beverly"](#); [Moore, Tirrill E](#); ["Alan Jenkins"](#); ["kmartin@cucainc.org"](#); ["Kurt J. Boehm"](#); ["Timothy Dodge"](#); ["Ben Snowden"](#); ["Jirak, Jack"](#); ["Taggart, Jack"](#); ["Catherine C. Jones"](#); ["John D. Burns"](#); ["Andrea C. Bonvecchio"](#); ["Joshua Warren Combs"](#); ["Charles Bayless"](#); ["James H. Jeffries, IV"](#); ["David Neal"](#); ["csedwards@wardandsmith.com"](#); ["Taylor Jones"](#); [smiller@cucainc.org](#); [dori.jaffe@sierraclub.org](#); [gthompson@selcnc.org](#); ["rpage@crisppage.com"](#); [Conant, Douglas](#); [Jason A. Higginbotham](#); [Bridget Lee \(Sierra Club\)](#); [Feathers, Rick](#); [John D. Runkle](#); [NCUCexhibits@ncuc.net](#)  
**Cc:** [Josey, Robert](#); [Luhr, Nadia](#); [Keyworth, Anne](#); [Felling, Thomas](#); [Edmondson, Lucy](#); [Ayers, Christopher J](#); [Freeman, William](#)  
**Subject:** NOTICE OF FILING: Docket Nos. E-7, Sub 1276 & E-7, Sub 1134 - Errata Sheet & Corrected Supplemental Exhibits of David M. Williamson  
**Date:** Friday, October 20, 2023 5:05:55 PM  
**Attachments:** [image001.png](#)  
[E-7, Sub 1276 - Errata Sheet and Corrected Supplemental Exhibits - D. Williamson.pdf](#)

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Good afternoon,

Attached please find an electronic service copy of the filing made today in Docket Nos. E-7, Sub 1276 & E-7, Sub 1134 - Errata Sheet & Corrected Supplemental Exhibits of David M. Williamson.

Thank you,

## Erica S. Jones

North Carolina Certified Paralegal  
Public Staff – N.C. Utilities Commission  
430 N. Salisbury Street, Suite 5097  
4325 Mail Service Center  
Raleigh, NC 27699-4300  
Phone: (919) 733-6113  
[erica.jones@psncuc.nc.gov](mailto:erica.jones@psncuc.nc.gov)

