

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 178

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:
Rulemaking Proceeding to Implement
Performance-Based Regulation of
Electric Utilities

REPLY COMMENTS OF
CIGFUR I, II, AND III

NOW COME the Carolina Industrial Group for Fair Utility Rates I (CIGFUR I), 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 Commission Rule R1-5 and the Commission's October 14, 2021 Order Requesting Comments and Proposed Rules and its November 24, 2021 Order Granting Extension, and respectfully offer the following brief reply comments as a supplement to the comments and proposed rules it offered by way of Joint Intervenors' joint reply comments, which are filed separately in this docket.

- CIGFUR reiterates and incorporates by reference herein the issues and arguments raised in its initial comments filed in this docket.
- CIGFUR strongly supports and incorporates by reference herein the Joint Reply Comments, filed contemporaneously with these reply comments, of CIGFUR, the Carolina Utilities Customers Association, Inc. (CUCA), the North Carolina Sustainable Energy Association (NCSEA), and the North Carolina Justice Center, North Carolina Housing Coalition, Sierra Club, and Southern Alliance for Clean Energy (collectively, NCJC et al.) (NCJC et al., together with CIGFUR, CUCA, and NCSEA, Joint Intervenors). Joint Intervenors attach to their Joint Reply

Comments as Appendix B a proposed rule implementing PBR and N.C. Gen. Stat. § 62-133.16.

- For all the reasons set forth in the Public Staff's reply comments filed in this docket, CIGFUR strongly supports the Public Staff's proposal to set a schedule that requires each electric public utility, if the applicable utility elects to file a general rate case which includes an application for performance-based regulation (PBR), to do so in a designated year as set forth by the Public Staff in its reply comments.
- For all the legal and policy reasons set forth in Joint Intervenors' Reply Comments, CIGFUR strongly supports the reversion back to traditional rates based on cost service, set pursuant to N.C. Gen. Stat. § 62-133, upon the expiration of a PBR period. If the Commission declines to endorse the position of Joint Intervenors on this issue, however, CIGFUR notes that it is critically important that ratepayers are protected from the possibility of the utility being allowed to over-earn if third-year MYRP rates are allowed to remain in effect after the expiration of an MYRP. Accordingly, if the Commission declines to adopt the Joint Intervenors' position on this issue, CIGFUR alternatively supports the Public Staff's position to require that at least 300 days prior to the expiration of an MYRP, the applicable electric public utility notify the Commission of when it intends to file a general rate case with or without a PBR application and the requested effective date of new base rates. CIGFUR further alternatively supports the Public Staff's position that if the requested effective date of new base rates is after the MYRP's expiration date, the

Commission shall conduct a review for reasonableness of the utility's rates pursuant to N.C. Gen. Stat. § 62-16(e).

- CIGFUR supports the Public Staff's addition to its revised proposed PBR rule – as reflected in the Public Staff's and Joint Intervenors' reply comments – that upon the filing of a PBR application, the applicable electric public utility must file a new depreciation study completed within the preceding 180 days.
- CIGFUR agrees with NCSEA that neither Duke Energy Progress, LLC (DEP), nor Duke Energy Carolinas, LLC (DEC) (together, Duke) should be allowed to file a PBR application until after the Carbon Plan is developed on or before December 31, 2022. In support of this position, CIGFUR notes that the list of Commission-authorized capital spending projects allowed to flow, for cost recovery purposes, through a multi-year rate plan (MYRP) will be determined for the three-year PBR period at the outset of an MYRP. If the list of capital spending projects was approved before the initial Carbon Plan is developed on or before December 31, 2022, it would undermine the Legislature's intent to have the Carbon Plan inform the capital spending plan approved as part of an MYRP. CIGFUR further agrees with the Public Staff that allowing DEP or DEC to supplement its PBR application with supplemental testimony after the initial Carbon Plan is developed will preclude or diminish intervenors' ability to review, conduct discovery regarding, and potentially challenge the applicable utility's spending plans. For these reasons, CIGFUR agrees with the procedural positions as to timing and sequential order of processes as advanced by both NCSEA and the Public Staff.

- CIGFUR supports CUCA’s proposed Rule R1-17.c.g.iii.1.– 4., as follows:
 - iii. In its evaluation of the reasonableness of rates proposed in a PBR application, the Commission shall consider:
 1. Whether the PBR plan is more likely than current regulation to advance the goals of utility cost control, lower rates, and reduced administrative burden.
 2. Whether post-test year cost increases exceed forecasts of regional public utility cost escalation rates, such as those developed by IHS Global Insight.
 3. Whether the utility appropriately considered and evaluated alternatives to its proposed investments, including third-party provided solutions.
 4. Whether average customer rates (by class) and bills (for residential customers) will be within a reasonable range of peer utilities’ rates and bills during and at the conclusion of the rate plan.¹

- It is worth noting that despite the representations made by Duke in its Motion for Extension of Time filed in this docket for the purpose of needing “additional time to collaborate with [certain] parties,”² CIGFUR believes the reply comment filings in this docket will reflect that it was actually the Joint Intervenors and the Public Staff who expended the most time, resources, and effort towards meaningfully collaborating with other parties who represent occasionally competing interests in an effort to reach consensus or, at least, compromise on as many disputed issues as possible.

- Given the complexity of the issues involved in this docket, as well as the number of procedural and substantive issues that remain unresolved as between Duke and the Public Staff/Joint Intervenors, CIGFUR believes there could be value in the

¹ CUCA’s Initial Comments, Proposed Rule R1-17. Filing of Increased Rates, pp. 5-6, Application for Authority to Adjust Rates, Docket No. E-100, Sub 178 (Nov. 9, 2021).

² Motion for Extension of Time to File Reply Comments to Implement Performance-Based Regulation of Electric Utilities, Docket No. E-100, Sub 178, p. 2 (Nov. 19, 2021).

NCJC et al.'s recommendation that the Commission initiate a supplemental PBR rulemaking process to continue after February 10, 2022.³

WHEREFORE, CIGFUR respectfully requests that the Commission consider these reply comments as a supplement to the joint reply comments submitted by Joint Intervenors, which includes CIGFUR.

Respectfully submitted, this the 17th day of December, 2021.

/s/ Christina D. Cress
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³ Comments and Partial Proposed Rules Submitted on Behalf of North Carolina Justice Center, North Carolina Housing Coalition, Sierra Club, and Southern Alliance for Clean Energy, Docket No. E-100, Sub 178, p. 4 (Nov. 9, 2021).

CERTIFICATE OF SERVICE

The undersigned attorney for CIGFUR certifies that she served by electronic mail the foregoing Reply Comments of CIGFUR I, II, and 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 17th day of December, 2021.

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