

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

**DOCKET NO. E-2, SUB 931  
DOCKET NO. E-7, SUB 1032  
DOCKET NO. E-100, SUB 179**

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. E-2 Sub 931	)	
	)	
In the Matter of Application by Carolina	)	
Power & Light Company, d/b/a Progress	)	
Energy Carolinas, Inc., for Approval of	)	
Demand-Side Management and Energy	)	
Efficiency Cost Recovery Rider Pursuant to	)	
G.S. 62-133.9 and Commission Rule R8-69	)	
	)	
Docket No. E-7, Sub 1032	)	CIGFUR'S RESPONSE IN
	)	SUPPORT OF PUBLIC
	)	STAFF'S MOTION FOR
In the Matter of Petition by Duke Energy	)	PROCEDURAL RELIEF AND
Carolinas, LLC, for Approval of	)	REQUEST FOR FURTHER
Modifications to Residential Service Load	)	RELIEF
Control Rider	)	
	)	
Docket No. E-100, Sub 179	)	
	)	
In the Matter of Duke Energy Progress,	)	
LLC, and Duke Energy Carolinas, LLC,	)	
2022 Biennial Integrated Resource Plans	)	
and Carbon Plan	)	

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) (together with CIGFUR II, CIGFUR), by and through counsel, and respectfully request that the North Carolina Utilities Commission (Commission) approve the Public Staff's September 7, 2023 Motion for Procedural Relief (Motion) filed in the above-captioned dockets, as well as the further relief requested by Duke Energy Progress, LLC (DEP)

and Duke Energy Carolinas, LLC (DEC) (together with DEP, Duke or the Companies), to the extent Duke is requesting that the Commission issue an order by the end of the second quarter of 2024 and subject to the additional relief requested in this motion. CIGFUR takes no position at this time regarding the remaining relief requested by Duke. In addition, CIGFUR is also making the following additional requests for relief:

1. On June 24, 2008, CIGFUR II filed a petition to intervene in Docket No. E-2, Sub 931. CIGFUR II was allowed intervention by Commission Order dated July 1, 2008.

2. On February 8, 2019, CIGFUR III filed a petition to intervene in Docket No. E-7, Sub 1032. CIGFUR III was allowed intervention by Commission Order dated February 15, 2019.

3. On October 20, 2020, the Commission issued an order approving the Companies' current versions of demand-side management (DSM) and energy efficiency (EE) cost recovery mechanisms (Mechanism(s)) in Docket Nos. E-2, Sub 931, and E-7, Sub 1032.

4. On October 12, 2021, CIGFUR—together with one of its member companies, Messer Americas—presented on the Southern California Edison's Time-of-Use Base Interruptible Program to the Non-Residential Working Group within Duke's Comprehensive Rate Design Study.<sup>1</sup>

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<sup>1</sup> The slide deck jointly presented on behalf of CIGFUR and Messer Americas can be located at Comments of CIGFUR II and III at Attachment P, Docket No. E-100, Sub 179 (July 15, 2022).

5. On November 24, 2021, CIGFUR filed a joint petition to intervene in Docket No. E-100, Sub 179 (Carbon Plan Docket). CIGFUR was allowed intervention by Commission Order dated November 29, 2021.

6. On July 15, 2022, CIGFUR filed Comments in the Carbon Plan Docket, in which CIGFUR made certain recommendations regarding Duke's proposed Grid Edge and Customer Programs, including that Duke should

offer new EE/DSM programs and expand its existing suite of demand response programs consistent with the feedback CIGFUR has previously provided in multiple stakeholder forums. More specifically, CIGFUR encourages Duke to adopt a program mirrored after the Southern California Edison's Time-of-Use Base Interruptible Program (TOU-BIP), a voluntary program which would also include the option to participate in a related Emergency Load Reduction Program (ELRP).<sup>2</sup>

7. In addition, CIGFUR commented in the Carbon Plan docket that

CIGFUR believes that both existing and proposed demand-response programs for non-residential customers are a largely untapped and/or underutilized resource that Duke failed to sufficiently consider in developing its proposed Carbon Plan.<sup>3</sup>

8. On September 2, 2022, CIGFUR caused to be pre-filed in Docket No. E-100, Sub 179 the direct testimony of Michael P. Gorman, who testified in pertinent part that "without an emergency demand response program similar to that offered by Southern California Edison through its Base Interruptible Program ('BIP') and corresponding

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<sup>2</sup> Comments of CIGFUR II and III, at Paragraph VI.a. (internal citations omitted), Docket No. E-100, Sub 179 (July 15, 2022).

<sup>3</sup> *Id.* at Paragraph X.f.

Emergency Load Reduction Program ('ELRP'), flexible industrial load will continue to be an under-leveraged demand-side resource.”<sup>4</sup>

9. On December 30, 2022, the Commission issued an *Order Adopting Initial Carbon Plan and Providing Direction for Future Planning* (Carbon Plan Order), in which it found in pertinent part that:

[T]he Commission finds that Duke can also reduce load by decreasing the number of nonresidential customers that elect to opt out of its DSM/EE programs. As Duke witness Duff noted a ‘significant portion’ of Duke’s nonresidential customers, representing approximately 30% of its load, have opted out of participation. Tr. vol. 14, 93-94. Duke witnesses testified that ‘to achieve the aggressive long-term energy efficiency projection necessary for energy transition and included in the Carbon Plan, the Companies recognize that they must increase the efficiency savings from customers that are participating in the Companies’ portfolio *and* obtain savings from customers not participating in its portfolio of EE/DSM programs or, as the Companies call it, expanding the pool for savings.’ Tr. vol. 13, 65 (emphasis added). Duke witness Huber outlined some of the actions Duke has taken to reduce the number of customers that opt out of participating in the portfolio of DSM/EE programs including working with CIGFUR to develop new DR programs and streamlining the way for customers to opt in. Tr. vol. 13, 128; tr. vol. 30, 64. Duke’s Grid Edge Panel further noted that Duke has ‘a long history of working with stakeholders in the DSM/EE Collaborative to ensure that their portfolios of nonresidential programs are both attractive and comprehensive.’ **The Commission directs Duke to focus on expanding the pool for savings by developing programs aimed at reducing the number of DSM/EE opt outs.**<sup>5</sup>

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<sup>4</sup> Pre-Filed Direct Testimony of Michael P. Gorman on behalf of CIGFUR II & III, Docket No. E-100, Sub 179 (Sep. 2, 2022).

<sup>5</sup> *Order Adopting Initial Carbon Plan and Providing Direction for Future Planning* at 110, Docket No. E-100, Sub 179 (Dec. 30, 2022) (emphasis added).

10. Also in the Carbon Plan Order, the Commission ordered in pertinent part that “Duke shall continue to explore avenues to increase load reduction by implementing new DSM/EE programs, implementing EE and load reduction programs for wholesale customers, and reducing the number of non-residential customers that [] have opted out of the DSM/EE program.”<sup>6</sup>

11. To date, the Companies have not proposed new DSM/EE programs and/or modifications to existing DSM/EE programs consistent with CIGFUR’s feedback to potentially enable additional EE/DSM program participation by non-residential customers. However, the Companies have continued to engage with CIGFUR on these issues and CIGFUR remains committed to working collaboratively and constructively with the Companies, the Public Staff, and other parties to achieve compliance with the Carbon Plan Order regarding working to implement new/modified non-residential EE/DSM Programs that could help reduce the number of EE/DSM opt-outs.

12. CIGFUR agrees with the Companies that timely implementation of the Companies’ proposed EE Enablers is critical to help achieve the Companies’ goals to shrink the challenge of the energy transition for customers and is consistent with the policy goals set forth in House Bill 951 (S.L. 2021-165). More specifically, CIGFUR believes it is very important to avoid any unnecessary delays of proposed new and/or modified non-residential demand response programs that if implemented, may decrease the number of EE/DSM opt-outs. Nearly nine months have elapsed since issuance of the Carbon Plan Order without . For these reasons, CIGFUR believes that a potential delay to Vintage Year 2025 or potentially even Vintage Year 2026 of implementation

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<sup>6</sup> *Id.* at Ordering Paragraph 28.

of new and/or modified EE/DSM programs for the purpose of decreasing the number of EE/DSM opt-outs is unwarranted, inconsistent with the Commission's directives issued in the Carbon Plan Order, and inconsistent with the policy goals set forth in HB 951. Therefore, CIGFUR recommends that issues pertaining to non-residential demand response programs, including consideration of new programs and/or modifications to existing programs, be considered on a more expedited basis than the timeframe contemplated by the Public Staff and the Companies. More specifically, CIGFUR believes that any such new programs and/or modifications to existing programs for the purpose of decreasing opt-outs should be accelerated so that they can be implemented without delay to take effect in the soonest possible Vintage Year.

13. In addition, because the comprehensive mechanism review contemplated by the Public Staff in its September 7, 2023 Motion for Procedural Relief may result in proposed amendments to Commission Rules governing EE/DSM programs administered by all electric public utilities in North Carolina, including Dominion Energy North Carolina (Dominion), CIGFUR respectfully requests that the Commission open a new docket specific to Dominion, allow interested parties the opportunity to file petitions to intervene, and consolidate such docket with the above-captioned dockets for purposes of enabling Dominion and its customers to participate in the EE/DSM mechanism review, at least to the extent such review involves an evaluation of the merits and/or policy justifications for potential amendments to Commission Rules that could have material impacts for Dominion's customers as well as Duke's customers. Because the relief requested by the Public Staff could have impacts on Dominion and, by extension, impacts on Dominion's customers

including CIGFUR I's member companies,<sup>7</sup> CIGFUR respectfully requests that the Commission open a new docket specific to Dominion, allow interested parties the opportunity to file petitions to intervene, and consolidate such docket with the above-captioned dockets for purposes of enabling Dominion's customers to participate in the EE/DSM mechanism review, at least to the extent that such review involves consideration of potential Commission Rule changes that, if implemented, would also affect Dominion's customers.

14. Finally, CIGFUR would like to bring to the Commission's attention an issue that has long posed a hindrance to the ability of non-residential customers to effectively advocate for new or modified EE/DSM programs that they would be interested in participating in if offered: the exclusion of attorneys from participating in the EE/DSM Collaborative. This exclusion puts many intervenors and interested parties—not just non-residential customers—at a significant disadvantage. For CIGFUR, the practical implications of this policy mean that CIGFUR is largely relegated to advocating on EE/DSM-related issues either in 1:1 meetings with the Companies or in contested dockets before the Commission, neither of which are ideal when the Companies have long taken the position that the EE/DSM Collaborative is the most appropriate forum for wide stakeholder consideration of new demand response programs and/or modifications to existing demand response programs. But this long-standing policy is not only problematic for CIGFUR; it is also problematic for other interested parties. For starters, this policy assumes an interested party has a deep bench of non-attorney

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<sup>7</sup> CIGFUR I is not a party to the instant dockets because the above-captioned dockets are specific to DEP and/or DEC. CIGFUR I's member companies are customers of Dominion Energy North Carolina.

subject matter experts and other human resources that can be dispatched to EE/DSM Collaborative meetings. If a party does not have a roster of non-attorney subject matter experts available to them, they are effectively kneecapped from having a voice in the EE/DSM Collaborative. At its core, this policy is fundamentally non-inclusive and creates access to justice and equity issues. Moreover, it is inconsistent with the stated policy goals of HB 951 and the Companies' efforts to "shrink the challenge" of the energy transition, inasmuch as it is preventing effective collaboration and advocacy that would help to achieve a shared goal that has been ordered by the Commission to be accomplished in its Carbon Plan Order. Finally, continuing a policy that is posing an obstacle to forward progress simply because it is the way things have always been done is inefficient, ineffective, and unwarranted. Thankfully, this is a problem for which there is a very simple and easy fix: by changing the policy to allow attorneys to participate in the DSM/EE Collaborative.

15. CIGFUR reached out to the other parties in the above-captioned Mechanism dockets and represent the parties' respective positions on this response and request for further relief as follows:

- a. Duke does not support CIGFUR's request to allow attorneys to participate in the EE/DSM Collaborative and notes that attorneys are allowed to participate in the EE/DSM mechanism review, and takes no position on the remainder of CIGFUR's requests for further relief;
- b. Dominion Energy does not take a position regarding CIGFUR's motion, except with respect to the relief requested in Paragraph 12. With respect to the relief requested in Paragraph 12, Dominion does not support a



Dominion-specific docket for the potential rule change. If the Commission decides to explore a revision to Rule R8-69 as proposed by the Public Staff, Dominion asserts that a generic E-100 docket would be a more appropriate forum. Dominion also does not support consolidating such a docket with the Duke EE/DSM Mechanism and 2022 Carbon Plan dockets, since DENC has its own mechanism, for which the next round of review is not scheduled to commence until 2026, per the Commission's March 22, 2022 order issued in Docket No. E-22, Sub 464.

- c. The Public Staff objects to CIGFUR's request for expedited review of new or modified non-residential EE/DSM programs, supports CIGFUR's request for relief in Paragraph 12 to the extent that if any Commission Rule R8-68 or R8-69 rule changes are suggested or recommended in the instant proceeding, those proposals be considered in a generic docket open to all parties, including Dominion Energy North Carolina, and supports CIGFUR's request that attorneys be permitted to participate in the EE/DSM Collaborative;
- d. the Attorney General's Office supports including Dominion Energy North Carolina in any discussion or review of proposed amendments to applicable Commission Rules, but takes no position at this time as to CIGFUR's remaining requests for relief contained in this motion and reserves the right to address these issues in substantive comments as may be permitted by the Commission;

- e. the North Carolina Sustainable Energy Association supports CIGFUR's request that the Commission order a change in policy to allow attorneys to participate in the EE/DSM Collaborative, but takes no position as to CIGFUR's remaining requests for relief contained in this motion;
- f. the North Carolina Electric Membership Corporation (NCEMC) is not currently a party to Docket Nos. E-2, Sub 931 or Docket No. E-7, Sub 1032, but NCEMC is a party to Docket No. E-100, Sub 179. In the context of Docket No. E-100, Sub 179, NCEMC does not take a position on CIGFUR's request for further relief. In the event, however, DEC or DEP, in their respective DSM/EE mechanism dockets seek to "explore avenues to increase load reduction by implementing new DSM/EE programs, implementing EE and load reduction programs for wholesale customers," as discussed in the Commission's December 30, 2022 Carbon Plan Order at p. 110, or discuss such mechanisms within the DSM/EE collaborative process, NCEMC states it would seek to participate in those discussions and intervene in those dockets on behalf of its members, as appropriate.
- g. the Carolinas Clean Energy Business Association, Carolina Utility Customers Association, Inc., Clean Power Suppliers Association, ElectriCities, Fayetteville Public Works Commission, Walmart, and the Southern Environmental Law Center and its clients, the Southern Alliance for Clean Energy, the Natural Resources Defense Council, and the Sierra Club, take no position on this motion at this time; and

- h. As to the remaining parties in the above-captioned dockets, CIGFUR did not receive a response within the timeframe requested.

16. For ease of reference, CIGFUR has included a table containing the other parties' respective positions on this Motion, as follows:

	<b>CIGFUR's Request for Expedited Review of New/Modified Non-Residential EE/DSM Programs (Paragraph 12)</b>	<b>CIGFUR's Request for Dominion-Specific Docket and Consolidation with Current Dockets to Extent EE/DSM Rule Changes Contemplated as part of Duke's mechanism review (Paragraph 13)</b>	<b>CIGFUR's Request for the Commission to Order that Attorneys be Allowed to Participate in EE/DSM Collaborative (Paragraph 14)</b>
Duke Energy	No position at this time	No position at this time	Oppose and note that attorneys are allowed to participate in the EE/DSM mechanism review
Dominion Energy	No position	Oppose. Dominion does not support a Dominion-specific docket for the potential rule change. If the Commission decides to explore a revision to Rule R8-69 as proposed by the Public Staff, Dominion asserts that a generic E-100 docket would be a more appropriate forum. Dominion also does not support consolidating such a docket with the Duke EE/DSM Mechanism and 2022 Carbon Plan dockets, since DENC has its own mechanism, for which the next round of review is not scheduled to commence until 2026, per the Commission's March 22, 2022 order issued in Docket No. E-22, Sub 464.	No position
Public Staff	Oppose	Support, to the extent that if any amendments to Commission Rules R8-68 or 69 are proposed in instant dockets, those proposals should be considered in a generic docket open to all parties.	Support
Attorney General's Office	No position at this time and reserves right to address in substantive comments if permitted	Support including DENC in any discussion or review of proposed amendments to applicable Commission Rules	No position at this time and reserves right to address in substantive comments if permitted
North Carolina Sustainable Energy Association	No position at this time	No position at this time	Support

NC Electric Membership Corporation	No position at this time. In the event, however, DEC or DEP, in their respective DSM/EE mechanism dockets seek to “explore avenues to increase load reduction by implementing new DSM/EE programs, implementing EE and load reduction programs for wholesale customers,” as discussed in the Commission’s December 30, 2022 Carbon Plan Order at p. 110, or discuss such mechanisms within the DSM/EE collaborative process, NCEMC states it would seek to participate in those discussions and intervene in those dockets on behalf of its members, as appropriate.	No position at this time	No position at this time
Carolina Utility Customers Association, Inc.	No position at this time	No position at this time	No position at this time
Carolinas Clean Energy Business Association	No position at this time	No position at this time	No position at this time
Clean Power Suppliers Association	No position at this time	No position at this time	No position at this time
ElectriCities	No position at this time	No position at this time	No position at this time
Fayetteville Public Works Commission	No position at this time	No position at this time	No position at this time
SELC, Sierra Club, NRDC, and SACE	No position at this time	No position at this time	No position at this time
Walmart	No position at this time	No position at this time	No position at this time

WHEREFORE, CIGFUR respectfully requests the following relief:

- I. That the Commission consider the issue of new EE/DSM programs and/or modifications to existing programs for non-residential customers on an expedited basis separate and apart from the rest of the EE/DSM Mechanism review, so that implementation of these specific changes can occur for the soonest possible Vintage Year;
- II. That the Commission open a new docket specific to Dominion, allow interested parties the opportunity to file petitions to intervene, and consolidate such docket with the above-captioned dockets for purposes of enabling Dominion's customers to participate in the EE/DSM mechanism review, at least to the extent Duke's mechanism review may involve consideration of potential Commission Rule changes that, if implemented, would also affect Dominion's customers, as sought by the Public Staff in its separate motion filed in these dockets; and
- III. That the Commission order that attorneys shall be allowed to participate in the EE/DSM Collaborative.

Respectfully submitted this 15th day of September, 2023.

/s/ Christina D. Cress  
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**CERTIFICATE OF SERVICE**

The undersigned attorney for CIGFUR hereby certifies that she has served a copy of the foregoing motion on all parties of record in accordance with Commission Rule R1-39.

This the 15<sup>th</sup> day of September, 2023.

/s/ Christina D. Cress  
Christina D. Cress

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Sep 15 2023