

**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
	)	INITIAL COMMENTS
	)	
In the Matter of Petition by Duke Energy	)	
Carolinas, LLC, for Approval of	)	
Modifications to Residential Service Load	)	
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 submit these initial comments regarding the ongoing comprehensive review of the demand-side management (DSM) and energy efficiency (EE) cost recovery mechanisms of Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC (DEP) (together, Duke or the Companies).

## **PROCEDURAL AND LEGISLATIVE BACKGROUND**

1. The North Carolina General Assembly enacted G.S. 62-133.9 as part of the Renewable Energy and Energy Efficiency Portfolio Standard (REPS) legislation codified in 2007 by the enactment into law of Senate Bill 3 (S.L. 2007-397). As part of the section governing cost recovery for demand-side management (DSM) and energy efficiency (EE) (together, DSM/EE) measures, industrial customers (and large commercial customers) are explicitly authorized by law to opt-out from participating in and paying for utility-administered DSM/EE programs. *See* G.S. 62-133.9(f).

2. 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.

3. 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.

4. 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) in Docket Nos. E-2, Sub 931, and E-7, Sub 1032.

5. On October 13, 2021, House Bill 951 (S.L. 2021-165) was signed into law. Among other things, House Bill 951 directs the Commission to develop a plan for the Companies to achieve the authorized carbon emissions reduction goals which may include "energy efficiency measures" and "demand-side management," among other resources. G.S. 62-110.9(1).

6. 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. On December 30, 2022, the Commission issued its order approving the Companies' initial Carbon Plan.

7. On September 7, 2023, the Public Staff filed a Motion for Procedural Relief, requesting that the Commission issue a scheduling order in the existing Mechanism dockets calling for parties, including Duke, to file initial comments concerning the proposed enablers and the full Mechanism review.

8. On October 30, 2023, the Commission issued an Order Granting Public Staff's Motion for Procedural Relief and Scheduling Technical Conference, which among other things solicited initial and reply comments on January 26 and March 29, 2024, respectively, on a number of issues related to the Companies' ongoing EE/DSM Mechanism Review.

9. On December 18, 2023, the Commission held a technical conference in these dockets for the purpose of receiving oral presentations from the parties regarding the Companies' existing Mechanisms and a summary of the work of the DSM/EE Mechanism Review stakeholder process. CIGFUR participated in this technical conference by providing a subject matter expert to speak on the "Large Customer Panel," together with Walmart and the Carolina Utility Customers Association Inc. (CUCA). On December 15, 2023, CIGFUR filed in these dockets the biography and slide deck of PJ Klein, P.E., Business Continuity Program Manager and Assistant Division Manager – Energy for Corning Incorporated, which was presented as part of Mr. Klein's remarks during the technical conference. The slide deck presented by

CIGFUR's SME and positions of CIGFUR reflected therein are hereby incorporated by reference herein.

**CIGFUR'S ADVOCACY REGARDING DEMAND RESPONSE PROGRAMS**

10. 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>

11. 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>

12. 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>

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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, Attachment P, Docket No. E-100, Sub 179 (July 15, 2022).

<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.

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

14. CIGFUR reiterates the aforementioned positions taken in prior dockets and/or expressed in other forums related to EE/DSM programs.

**QUALIFICATIONS OF CIGFUR’S POSITIONS REPRESENTED BY DUKE**

15. CIGFUR has appreciated the opportunity to be actively involved in the EE/DSM Mechanism Review stakeholder process thus far. CIGFUR further appreciates the Companies taking the laboring oar in compiling and tracking the respective parties’ positions regarding proposed revisions to the Mechanisms.

16. That said, CIGFUR believes additional context and qualifications are needed to most accurately reflect its positions regarding certain of the proposed revisions to the Mechanisms, especially with respect to the following:

Revised Paragraph Number	Qualifications on CIGFUR’s Positions as Represented by the Companies
DEC # 3 and DEP # 4	The costs associated with expanding low-income residential programs should be contained to the residential class of customers. To the extent it would not be, CIGFUR opposes any such Mechanism changes. However, so long as such costs are not subsidized by non-residential customer classes,

<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).

	CIGFUR does not take a position on these proposed revisions.
DEC # 15 and DEP # 16	The costs associated with expanding low-income residential programs should be contained to the residential class of customers. To the extent it would not be, CIGFUR opposes any such Mechanism changes. However, so long as such costs are not subsidized by non-residential customer classes, CIGFUR does not take a position on these proposed revisions.
DEC # 45 and DEP # 28	CIGFUR's "support" is provided with the express understanding that this reflects a compromise position rather than CIGFUR's preferred position (which is to allow participation by attorneys in the EE/DSM Collaborative, as necessary).
DEC # 31 and DEP # 31	CIGFUR proposes that this program be renamed the "EE/DSM Innovation Program." CIGFUR also requests that it be clarified that the Efficiency Innovation Program filings must specify which customer class(es) are eligible to participate (and contain costs to only those classes of customers eligible to so participate).
DEC # 51 and DEP # 51	CIGFUR proposes that this program be renamed the "EE/DSM Innovation Program." CIGFUR also requests that it be clarified that the Efficiency Innovation Program filings must specify which customer class(es) are eligible to participate (and contain costs to only those classes of customers eligible to so participate).
DEC # 80 and DEP # 86	CIGFUR requests that "the agreed upon process that was jointly developed with the Public Staff in 2022" be spelled out with particularity in the Mechanism. Unless/until it is, CIGFUR is unable to take a position on the proposed revisions to this Paragraph.

### CIGFUR'S INITIAL COMMENTS

17. 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>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).

18. 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>

19. To date, the Companies have proposed some, but not all or enough, of CIGFUR’s suggestions and requested modifications to existing DSM/EE programs to potentially enable greater 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 the directive for Duke to implement new/modified non-residential EE/DSM Programs with the goal of reducing the number of EE/DSM opt-outs.

20. CIGFUR agrees with the Companies that timely implementation of the Companies’ proposed EE Enablers is critical to help shrink the challenge of the energy transition for customers—both from a least-cost perspective and from a carbon emissions reduction standpoint—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 and help to maximize non-residential participation in demand response programs. Nearly 13 months have elapsed since issuance of the

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



Carbon Plan Order without significant progress having been made to date to meaningfully reduce the number of EE/DSM opt-outs by non-residential customers. As a result, non-residential demand response unfortunately remains a largely underutilized resource in North Carolina. CIGFUR hopes that the revisions to the Companies' Mechanisms can be implemented expeditiously in order to provide the Companies with the necessary incentives to offer non-residential demand response programs that motivate opted-out customers to participate in the first possible Vintage Year.

21. Importantly, HB 951 requires that “[e]xisting law shall apply with respect to energy efficiency measures and demand-side management.” G.S. 62-110.9(2)a.

22. The public policy reasons underlying the non-residential EE/DSM opt-out codified into law by Senate Bill 3 remain just as applicable in present day as they were back in 2007. More specifically, large commercial and industrial customers continue to be heavily economically incentivized to implement their own EE/DSM measures as part of their overall energy conservation efforts. In addition, large commercial and industrial customers tend to be more sensitive and responsive to price signals than residential customers. Most importantly, however, is the fact that large commercial and industrial customers make their own investments in EE/DSM measures outside of utility-administered EE/DSM programs, which means that (1) these customers are footing the bill themselves for their own EE/DSM measures, rather than those costs flowing through utility-administered programs that would then be recoverable from other ratepayers; and (2) the system is benefitting from these EE/DSM measures

implemented independently of utility-administered programs, which in turn benefits all customers even though no other customers are bearing any of the cost burden.

23. Notwithstanding the fact that the opt-out is working as designed and should be preserved, CIGFUR also believes that demand response programs can be redesigned in a way that incentivizes opted-out non-residential customers to participate. CIGFUR understands that various changes to the Mechanisms are necessary to adequately incentivize the Companies to in turn offer programs that adequately incentivize opted-out customers to participate.

24. CIGFUR reserves the right to provide more specific feedback in its reply comments.

WHEREFORE, CIGFUR respectfully requests that the Commission consider these initial comments in its decision making in this docket, reserving the right to comment on any and all issues germane to these dockets in its reply comments, and for such other and further relief as the Commission may deem just and appropriate.

Respectfully submitted this 26th day of January, 2024.

/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 comments on all parties of record to these dockets in accordance with Commission Rule R1-39.

This the 26<sup>th</sup> day of January, 2024.

/s/ Christina D. Cress  
Christina D. Cress

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Jan 26 2024