

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1193
DOCKET NO. E-2, SUB 1219

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1193

In the Matter of)
Application of Duke Energy Progress, LLC, for)
An Accounting Order to Defer Incremental)
Storm Damage Expenses Incurred as a Result)
of Hurricanes Florence and Michael and)
Winter Storm Diego)

POST-HEARING BRIEF
OF CIGFUR II

DOCKET NO. E-2, SUB 1219

In the Matter of)
Application by Duke Energy Progress, LLC, for)
Adjustment of Rates and Charges Applicable)
to Electric Utility Service in North Carolina)

NOW COMES the Carolina Industrial Group for Fair Utility Rates II (CIGFUR II or CIGFUR), by and through the undersigned counsel, pursuant to the Commission's October 9, 2020 Notice of Due Date for Proposed Orders and/or Briefs, and respectfully submits this post-hearing brief in the above-captioned dockets. CIGFUR II also notes at the outset that it supports the Findings of Facts and Conclusions of Law relating to the CIGFUR Stipulation contained within the Proposed Order filed in these dockets by Duke Energy Progress, LLC.

BACKGROUND AND PROCEDURAL HISTORY

CIGFUR II is an association of large, high-load factor industrial customers, who take electric service from Duke Energy Purchase, LLC (DEP or Company) and purchase substantial amounts of electric power from DEP. In addition, CIGFUR II's members are

major employers of, and provide high-wage jobs in, the counties where they have manufacturing plants within DEP's service territory. (Tr. vol. 14, 291.)

On October 28, 2019, CIGFUR II filed a Petition to Intervene, which was granted by Commission Order dated October 30, 2019.

On April 13, 2020, CIGFUR II filed the direct testimony and exhibits of Nicholas Phillips, Jr. (witness Phillips). CIGFUR witness Phillips' testimony focused on the following issues: cost allocation methodology and revenue distribution between the customer classes, industrial rate design, the Company's requested ROE and capital structure, the Company's request to defer Grid Improvement Plan (GIP) costs, and the refund of Excess Deferred Income Taxes (EDIT).

On June 26, 2020, CIGFUR II and DEP entered into an Agreement and Stipulation of Settlement (CIGFUR Stipulation), resolving various disputed issues between the two parties as they relate to: (1) rate of return on equity (ROE); (2) capital structure; (3) the GIP; (4) Unprotected Excess Deferred Income Taxes (EDIT); (5) cost allocation; and (6) industrial rate design.

On July 20, 2020 CIGFUR II filed a Motion to Excuse witness Phillips. On July 23, 2020, CIGFUR II filed an Amended Motion to Excuse witness Phillips, clarifying that it was seeking to excuse witness Phillips from testifying in both the consolidated phase and the DEP-specific phase of the evidentiary hearing.

On July 23, 2020, the Commission issued an Order granting CIGFUR II's Motion to Excuse witness Phillips as it pertains to the consolidated phase of the evidentiary hearing, but denied CIGFUR II's Motion to Excuse witness Phillips as it pertains to the DEP-specific phase of the evidentiary hearing, on the grounds that "the Commission

anticipates having questions for witness Phillips on his testimony that pertains to the topics to be covered during the separate hearings.” Order Granting in Part and Denying in Part Motion to Excuse CIGFUR Witness Phillips from Testifying at Expert Hearings, p. 2, Docket No. E-7, Subs 1213, 1214, and 1187; Docket No. E-2, Sub 1219 (July 23, 2020).

On July 31, 2020, DEP and the Public Staff filed a Second Agreement and Stipulation of Partial Settlement (Second Partial Stipulation), which among other things, stipulated to an ROE of 9.6% and a capital structure consistent of 52% equity and 48% long-term debt.

On August 6, 2020, DEP and CIGFUR II entered into an Amendment to the CIGFUR Stipulation, agreeing to the ROE and equity ratio set forth in the Second Stipulation.

The parties to this proceeding have conducted substantial discovery on the issues raised in the Application, as well as on the direct, supplemental, and rebuttal testimony of the Company and the testimony of the intervenors.

GRID IMPROVEMENT PLAN (GIP)

DEP’s request for deferral treatment of GIP spending is supported by a majority of intervenors, representing diverse—and oftentimes competing—interests and should be allowed.

For purposes of settlement and subject to the conditions set forth in the CIGFUR Stipulation, and without taking a position on the individual programs comprising the GIP, CIGFUR agreed to support the Company’s request for deferred accounting treatment of costs associated with the DEP’s incremental grid investments incurred over a three-year period for which DEP will seek cost recovery in future a general rate case. “Because the

three-year GIP plan contains estimates, CIGFUR II's support for the GIP deferral will be subject to a reservation of its rights to review and object to the reasonableness of specific project costs in future rate cases." CIGFUR Stipulation, § III.A. The GIP "is proposed as a means to address certain trends, which the Companies have labeled 'megatrends,' as they attempt to deal with the changing needs of the electrical grid for their customers, and adapting the grid to provide customers with safer and more reliable power." (Tr. vol. 6, 130.)

It should be noted that the Company has entered into settlement agreements related to the GIP with multiple intervening parties who collectively constitute "a very diverse group of stakeholders[,]" representing the interests of low-income residential customers (NCJC *et. al*), commercial and industrial customers (CIGFUR, the Commercial Group, and Harris Teeter), environmental groups and renewable energy advocates (NCJC *et. al*, Vote Solar, and NCSEA), and the general using and consuming public (the Public Staff), respectively. (Tr. vol. 4, 129.)

The consumer trends of all customer classes are driving the need for GIP programs. Likewise, all customer classes are expected to benefit to from the GIP, and such anticipated benefits are not limited to reliability improvements.

The Commission heard a significant amount of testimony related to the expected benefits to ratepayers of GIP programs. It should be noted at the outset that some of the positions advanced in such testimony—namely, that most or all of the GIP benefits will be limited to reliability improvements, and that such reliability improvements will mostly or only benefit one class of customers at the expense of another—are factually erroneous and misleading. To the contrary, DEP witness Oliver testified at length about the ways in which the GIP will benefit customers; likewise, he testified in detail how such benefits—

which go well beyond anticipated reliability improvements—are expected to flow to all customer classes, especially residential customers.

CIGFUR contends that the Commission should give great weight to the testimony of witness Oliver, particularly regarding the below exchange, which occurred on cross-examination of witness Oliver by counsel for the Carolina Utility Customers Association (CUCA), during which witness Oliver ably explains that forecasted GIP benefits are decidedly not limited to reliability improvements.

Q. Would you agree that one of the primary purposes, if not the primary purpose, behind the proposed GIP investments is to make Duke's grid functioning more reliable, that is, stated another way, to reduce a current level of outage times?

A. No, I would not agree with that. When we built this plan, we built it to address the seven megatrends. The megatrends are pretty much undisputed in this case. You know, I'll list a few of those megatrends. First one would be growth and threats to grid infrastructure, particularly from cyberattacks. The cyberattacks that we're seeing are more numerous, and frankly more complex.

Another megatrend is growth in distributed energy resources and electric vehicles. This program is specifically designed to help us embrace that technology when it comes to private distributed energy resources and not just embrace it, leverage it to its fullest extent.

Another megatrend that we're – that the program is designed for would be environmental commitments that are being made by our customers to their shareholders and to their own customers about how they want to be sustainable and operate in sustainable territories.

Also, state and local commitments to things like carbon reduction. That's a megatrend that's certainly not going away, and we at the Company, at Duke Energy, have our own carbon reduction rule. So no, the primary purpose of this program is not reliability improvements. Is it a benefit that comes along with some of those investments? It absolutely is, and I'm excited about that. I think our customers will value that. But that's not the – that was not the purpose of the [GIP].

(Id. at 140-42.)

On further cross-examination by counsel for CUCA, witness Oliver reiterated that the benefits of the GIP program “are broad in nature,” and that it “is not a plan specifically about improving reliability.” (*Id.* at 147, 148.) Nevertheless, witness Oliver testified that GIP programs will improve reliability metrics in a way that benefits all customer classes, particularly the residential class. For example, witness Oliver pointed to increased efficiency for resolving storm outages, saying “[i]t is something to see when you can get a large neighborhood back in power after a long time without it, particularly during, say, the hot months that are hurricane season and the cold months that are ice storms” (emphasis added). (*Id.*) Given that many commercial and industrial customers have their own back-up generation resources, the expedient resolution to power outages caused by storms is just one example of a reliability benefit uniquely, and in many ways exclusively, well-suited to residential customers.

Witness Oliver further testified that while DEP performs relatively well on reliability metrics like the System Average Interruption Duration Index (SAIDI) and the System Average Interruption Frequency Index (SAIFI), it should be noted that such metrics are normalized to exclude major events such as ice storms, hurricanes, and other extreme weather events. (*Id.* at 144.) Targeting improvements to the Company’s storm response—which, again, primarily benefits residential customers for the reason set forth *supra*—DEC included self-optimizing grid (SOG) technology as part of its suite of GIP programs. Witness Oliver provided a real life example of the reliability benefits that stand to be gained by the residential class from implementation of the SOG technology: in early 2020, DEC was able to deploy newly-installed SOG technology in the Charlotte area after severe storms and tornadoes caused substantial damage to DEC’s system. Because of

the SOG technology, 3,000 DEC customers—the vast majority, if not all, of whom we can safely assume were residential or small business customers without their own back-up generation resources—were without power for about five minutes instead of the estimated 24 hours they would have been out had the SOG technology not been available. (Id. at 144-45.) In addition to reducing power outage times, witness Oliver also testified that GIP programs will reduce overall storm costs, an ancillary effect expected to benefit all customer classes. (Id. at 149.)

Moreover, witness Oliver testified that the benefits of increased enablement and improved leveraging of distributed energy resources (DERs) on DEP's system, another expected benefit of the GIP, will flow almost entirely to the residential class. Witness Oliver's testimony in response to questions from Commissioner Clodfelter was particularly informative on this topic:

Q. . . . Staying now with the capacity benefits from the program, on – in your rebuttal testimony, you say that the self-optimizing grid component is going to allow for the deferral of capacity. And I wasn't really clear whether that is generating capacity you were talking about again or bulk systems, transmission capacity, or capacity at the distribution level. What really are we deferring? What are we going to be deferring?

A. Yeah. So we valued – in the self-optimizing grid CBA, we valued hosting capacity. Hosting capacity is – and we value that, I think the number is about 340 megawatts of additional hosting capacity as we go through and build that system. And typically hosting capacity would be used for, in this case, private DER, like rooftop solar for both residential.

. . .

Q. . . . I want you to talk to me a little bit too about the cost-benefit analysis for the self-optimizing grid. One of the components in that predicts a \$53.4 million additional enablement of distributed generation benefits beginning in year 2028 and then growing thereafter. I want to – describe what those benefits are. How is that going to be realized? And how are you able to quantify that?

A. Yeah. So our engineers that put together the cost-benefit analyses take a look at the projected growth in private DER, which typically is rooftop solar,¹ and the value that brings to the system and the value that the hosting capacity being able to host that brings to the system. . . . Another – and I don’t believe we valued it this way, but the other important piece of that is ability for growth in electric vehicles, particularly at the fleet level, which we believe is going to be something very important that’s going to happen much sooner than we expect.

So it’s based on projections of private DER growth and the ability for us to effectively host and leverage that growth.

Q. Well, if I understand you, that’s predominantly rooftop solar, it’s not utility-scale solar; is that correct?

A. That is correct. Utility-scale solar is handled differently. Utility-scale solar, third-party-owned solar has its own set of rules, it’s own set of requirements. Typically third-party-owned solar providers pay their [own] interconnection charges. The system has produced, in North Carolina, some pretty solid effects for us. We are number two in the nation for utility-scale solar, yet have among the lowest rates also in the nation. . .

(emphasis added) (Tr. vol. 6 at 27-28, 30-32.)

These examples constitute just a few of the myriad ways in which (1) the residential class is at least a significant contributor to the need for some of the grid improvements contemplated by the GIP; and (2) the residential class will derive substantial quantitative and qualitative benefits—improved reliability and otherwise—from the GIP.

CIGFUR further contends that, if anything, the benefits projected to flow to the residential class from the GIP are understated by the methodologies used in the cost-benefit analyses upon which the Public Staff based its interpretation and position. For example, it is undisputed that loss production—the metric used to value projected benefits to the industrial class—is objective and easily quantifiable, whereas analogous

¹ As a practical matter given the load profiles of high load factor customers like CIGFUR II members, the 1-MW cap on net metering capacity for self-generation facilities in North Carolina means that the vast majority of rooftop solar generation is customer-sited at residential homes.

valuations for the residential class are entirely subjective and impossible to quantify in a fair, consistent manner. It's infinitely easier, after all, to calculate and multiply the unit cost and price of widgets than when trying to assign a value to human life, quality of life, career success, the list goes on. Indeed, a comparatively similar metric for the residential class would require complex individualized value judgments, which are both highly subjective and impossible to quantify. Second, all of the cost-benefit analyses and data upon which the Company and the Public Staff, respectively, used to reach their conclusions about projected benefits flowing to each customer class through implementation of the GIP were based on data reported prior to the beginning of the COVID-19 pandemic and subsequent shock wave and ripple effects felt in the way in which Americans live, socialize, work, and consume electric service. (Tr. vol. 9, 63, 72.) DEC witness Hager's testimony on this point, in response to questions by CIGFUR's counsel, should be sufficiently compelling as to call into question the underlying assumptions baked in to valuing avoided customer interruptions by simply assigning them an arbitrary, nominal value across the board.

Q. So that said, Ms. Hager, the interruption cost estimates for the Residential class included as part of the GIP analyses were pre-COVID, correct?

A. (Hager) Yes. That would be correct.

Q. And so those estimates don't reflect the fact that a significant portion of the workforce has worked from home in 2020; is that right?

A. That's correct, and I think that illustrates the changing nature of benefits realized by customers.

Q. I believe Mr. Jenkins asked you about the impossibility of valuing interruption cost for that residential customer who is on a 24-hour ventilator; is that right?

A. Yes.

Q. But in today's COVID-19 era, there's also a lot more common and perhaps less extreme examples. Just take one, for example, that all of us here today should be able to relate to, what about an expert witness testifying from home in this virtual proceeding? What value do you think that residential customer in that situation would place on avoiding a power outage?

A. It would be very high.

Q. So that's just one example, but what a significant portion of today's workforce continuing to work from home and perhaps continuing to work from home even beyond COVID-19, is it fair to say that a significant amount of commerce and business is being conducted from home?

A. You know, anecdotally, I think that's certainly true. I don't have any documents . . . I don't have any data to back that up, . . . but I think that's certainly a whole different paradigm than it was a year ago.

Q. And so I think you've sort of made my point and jumped to my conclusion here before I had a chance to do so, so thank you for that. But it's correct, is it not, that no studies have been conducted yet to reevaluate the customer interruption cost in today's COVID-19 era with a significant portion of the workforce working from home?

A. That is true. I'm not even sure when those estimates were made. I heard some discussion of it in talking with Mr. Oliver, but they are very much broad estimates and they were pre-pandemic.

(Tr. vol. 13, 126-28.)

For all these reasons, CIGFUR takes the position that the testimony of DEC witness Oliver and DEC witness Hager should be given significantly more weight than that of Public Staff witness Thomas on these issues. CIGFUR contends that witness Thomas' position drastically underestimates the anticipated GIP benefits expected to flow to residential customers, while simultaneously overstating the anticipated GIP benefits expected to flow to commercial and industrial customers.

(Tr. vol. 6, 136-37.)

In conclusion, the Commission has always based cost allocation on cost causation. Cost causation is concrete, objective, and stable over time, whereas allocation based on benefits would be a stark departure from decades of Commission precedent. Moreover, benefits—unlike cost causation—are subjective in that they are individually valued in the eyes of the beholder, and subject to change over time (as was pointed out in these hearings when comparing pre-COVID physical offices vs. remote work during (and possibly post-) COVID. The Public Staff, without any credible or compelling evidence, apparently seeks to overturn decades of widely accepted, previously litigated, and Commission-sanctioned assumptions related to the fundamental principle that cost allocation is based on cost causation.

It would be premature to decide cost allocation methodologies for GIP spending that has not yet occurred. The Commission should decide issues related to GIP cost allocation at the time when the Company seeks to recover its deferred GIP costs.

At the outset, CIGFUR notes that it agrees with the arguments advanced by the Commercial Group in Section III.A. of its post-hearing brief regarding allocation of GIP costs. See Post-Hearing Brief of The Commercial Group, pp. 11-13, Docket No. E-2, Sub 1219 (Dec. 4, 2020). In response to the suggestion advanced by Public Staff witness Thomas—who is not the Public Staff’s cost allocation or rate design witness—insinuating that the as yet undecided cost allocation methodology for the as yet unspent costs related to GIP implementation will be inequitable, CIGFUR fervently disagrees. In addition, witness Thomas’ testimony to this effect was premature as this issue is not yet ripe for consideration by the Commission. Indeed, not until the Company seeks to recover deferred GIP costs in its next rate case will such issue be ripe and ready to be litigated by the parties and decided by the Commission. It should also be noted that witness

Thomas, despite he himself injecting into this rate case the misplaced idea that GIP costs should be based on wholly subjective benefit valuations arbitrarily assigned writ large to the residential class, clarified that “at this time, I’m not recommending any changes to the allocation methodologies of those costs for GIP.” (Tr. vol. 7, 65.)

In response to the Public Staff’s recommended finding of fact contained in the proposed order it filed in the DEC rate case that “[i]t is premature for DEC to agree in advance to use a specific allocation factor or methodology to allocate deferred GIP costs among the customer classes in the next general rate case,” CIGFUR strongly disagrees. Public Staff’s Proposed Additional Findings, Evidence, and Conclusions, p. 4, Docket No. E-7, Subs 1213, 1214, and 1187 (Nov. 4, 2020). That DEP (or DEC) would enter into a settlement in which it agrees merely to preserve the *status quo* established over the last four (4) decades of its reliance on the minimum system method, for which both Duke entities have consistently been strident supporters and defenders, is appropriate and merely a continuation of the same historical allocation of distribution costs that has, time and again, been proposed by DEP and accordingly cemented in Commission precedent upon its approval of same. That said, CIGFUR points out that just because DEP has agreed to propose a specific allocation method for GIP costs—which are distribution-related—this does not in any way preclude the Public Staff from objecting to such allocation method at the appropriate time (i.e. not now) and/or recommending an alternative cost allocation method when DEP seeks to recover deferred GIP costs, nor does it in any way preclude the Commission from rejecting the minimum system method at that time in favor of a different cost allocation methodology. For these reasons, the

Public Staff's objections to this provision within the CIGFUR Stipulation are baseless and should be rejected by the Commission.

The Commission should implement predetermined quantitative and qualitative criteria to evaluate the benefits and cost-effectiveness of GIP programs on an ongoing basis and should require transparent reporting related to same.

In addition to the conditions set forth in the CIGFUR Stipulation, DEP agreed to implement the GIP plan within the parameters set forth in the Second Partial Stipulation. Such parameters include measures to increase accountability and transparency, such as a "measurement and verification process that [DEP] would report on a biannual basis, that would be every six months. [DEP is] going to report on scope, schedule, budget, and expected benefits." (Tr. vol. 6, 16.) As part of such reporting, DEP also has agreed to review the cost-effectiveness of GIP programs on an ongoing basis, including to "reassess and determine should we stop or should we maybe transfer some money into other programs" if fewer actual benefits are recognized than were forecasted, or if actual costs exceed estimates. (Id.) While several of the Company's internal evaluation metrics were referenced in testimony throughout the hearings in these dockets, Company witness Oliver conceded that neither quantitative nor qualitative evaluation criteria have been conclusively agreed upon by the Public Staff and DEP for inclusion as part of the reporting requirement set forth in the Second Partial Stipulation. (Id. at 17.)

For the reasons set forth herein, CIGFUR recommends that the Commission implement quantitative and qualitative evaluation criteria for the GIP, to be reported by DEP generally in a new Company-specific docket related to GIP implementation. CIGFUR recommends that the Commission consider ordering the following reporting requirements:

- Generally overall and specifically for each GIP program, the amount of anticipated vs. actual program costs and respective revenue requirement associated with each program, updated as plant is placed in service and thus, cost projections become actual incurred costs. For each budgeted vs. actual cost deviation exceeding a variance threshold to be determined by the Commission or as agreed upon by the parties, the Company should explain the reasons for such deviation(s).
- Generally overall and specifically for each GIP program, the revised cost-benefit analysis and conclusions reached when factoring in COVID-19, particularly with regard to how COVID-19 has caused drastically different habits and behaviors in residential customers, including the percentage of residential customers for the first time suddenly spending most or all time at home and/or working part-time, full-time, or exclusively from home.
- Generally overall and specifically for each GIP program, an itemization of the actual costs netted against actual benefits.
- Generally overall and specifically for each GIP program, the known and verifiable indirect benefits flowing to ratepayers, including but not necessarily limited to reliability improvements measured through customer interruptions (CI), customer minute interruptions (CMI), interruption cost estimates, System Average Interruption Duration Index (SAIDI), and System Average Interruption Frequency Index (SAIFI).
- Generally overall and specifically for each GIP program, the known and verifiable direct benefits flowing to ratepayers, including but not necessarily

limited to amount of any electric bill savings; any operational benefits resulting in lower utility bills, such as a reduction in operating expenses associated with outages, storm costs, fuel, or other O&M cost savings which would float to customers; and/or capacity benefits that effectively decrease required reserve margins. (See, e.g., Tr. vol. 7, 13.)

- Generally overall and specifically for each GIP program, the change in number of kilowatt hours used that reasonably can be attributed to implementation of GIP programs.
- Generally overall and specifically for each GIP program, the growth in DERs that reasonably can be attributed to the GIP; as well as the extent to which the GIP results in the Company's improved ability to leverage existing DERs to the advantage of DEP's system.
- Generally overall and specifically for each GIP program, the reduction to CO₂ emissions.
- For the self-optimizing grid, (1) amount of capacity deferred; (2) amount of hosting capacity and how such capacity is used for the benefit of specific customer class(es) (i.e. a residential customer's interconnection of rooftop solar panels to the distribution system, etc.); (3) amount of additional enablement of distributed generation and resulting benefits, and which customer class(es) and type(s) received what amount and proportional share of such benefits; and (4) reliability improvements and restoration efficiency associated with extreme weather events.
- For the lateral device program, an updated cost-benefit analysis.

- Whether and how the DER dispatch tool has successfully managed DERs, including whether it successfully obviates the need for large block load shed.
- Whether and to what extent GIP program(s) have enabled the Company to support fleet electrification.
- Whether, since the filing of the preceding report, there has been a change in current events or circumstances that materially affects the GIP or any components thereof, including any new legislative or executive policies that may be enacted, and an assessment regarding whether such changes reasonably necessitate reevaluation of any aspect(s) of the GIP or its component programs.
- Whether, since the filing of the last report, the Company has met with stakeholders or otherwise involved stakeholders in any plans the Company may have to extend the GIP beyond the initial time-limited duration of 3 years. In addition, the Company should endeavor to provide summaries of such feedback, and what steps DEP has taken to incorporate same.²

The provisions of the CIGFUR Stipulation pertaining to the GIP are just and reasonable, in the public interest, and should be approved in their entirety.

As previously mentioned, CIGFUR supports the approval of DEC's requested GIP deferral with certain conditions detailed therein, including a reservation of its right to review and object to the reasonableness of specific GIP costs in a future rate case.

² On cross-examination by counsel for CUCA, DEP witness Oliver testified that while the GIP program is limited in duration to three years, investment in the grid will be needed beyond the three-year plan contemplated by the GIP. (Tr. vol. 4, 130.) However, witness Oliver confirmed that the Company does not at this time have any known or definite plans to seek Commission approval of future grid-related programs. Moreover, witness Oliver testified that the Company would first "need to work with [the Stipulating Parties] in a similar way that we did for [the GIP program]" before proposing any additional or expanded grid investment for Commission review and approval in the future. (Id. at 129.)

(See CIGFUR Stipulation, § III.) Such provisions are consistent with those between the Company and the Public Staff and other intervenors, are reasonable and appropriate, and should be approved in their entirety. Although there was some contention by Public Staff witness Thomas that the CIGFUR settlement attempted to predetermine the cost allocation for GIP spending, that concern is misplaced and simply not reflected in the plain language of the CIGFUR Stipulation instead. Rather, the CIGFUR Stipulation merely contemplates that the Company will agree to propose allocation of GIP spending in a manner that is consistent with both the instant rate case as well as the cost allocation methodology approved by the Commission in DEC's last rate case, Docket No. E-7, Sub 1146. Such proposal would be subject to a full review by the Public Staff and other intervening parties in DEC's next general rate case, with the ultimate decision remaining in the Commission's sole discretion. (See, e.g., Tr. vol. 14, 336-37; see also id. at 347, 360.) For these reasons, the provisions of the CIGFUR Stipulation relating to the GIP should be approved in its entirety.

COST ALLOCATION ISSUES

Cost Causation Principles

Rates should be set based upon cost of service, without subsidies or unreasonable discrimination, in order to send appropriate price signals. Setting rates that minimize cross-subsidization and providing a price signal to customers reflecting "the true cost impact of their usage" is an important and fundamental cost causation principle. (Tr. vol. 11, 1088.) As witness Phillips testified, "[e]ach customer class should, to the extent practicable, produce revenues equal to the cost of serving that particular class, no more and no less." (Tr. vol. 14, 294.) In addition, establishing class rates and structures

based on actual cost of service is critical to the effective implementation of demand-side management programs. If ratepayers do not receive the proper price signals through rates, they cannot be expected to act as a rational consumer of electric service. For example, if a customer class is being subsidized by another customer class, the subsidized class receives an artificially deflated price signal. Artificially deflated price signals fail to appropriately reflect the true cost impact of customers usage; they also fail to incentivize effective demand-side management measures, making the ratepayers whose price signals are inaccurate less likely to engage in such measures than they otherwise would be if their rates properly reflected the actual cost of service.

Allocation of Generation and Transmission Costs

It should be emphasized at the outset that cost causation is the primary driver of and basis for choosing an appropriate methodology for allocation generation and transmission costs. DEP's proposed cost of service study (COSS) in this case relied on the Single Coincident Peak (1CP) cost allocation methodology. The Public Staff, on the other hand, proposed an opposing methodology, the Summer Winter Peak and Average (SWPA). CIGFUR II agrees with and supports the arguments advanced in CUCA's post-hearing brief related to its support of DEP's COSS and underlying methodology in this rate case. See Post-Hearing Brief of CUCA, Section E.1., pp. 25-28, Docket No. E-2, Sub 1219 (Dec. 3, 2020). It also should be noted that, based on witness Phillips' analysis, CIGFUR recommends that DEP should consider transitioning to a methodology that reflects DEP's transition to winter planning. (See e.g., Tr. vol. 14, 300.)

The Commission should reject the Public Staff's arguments in support of the SWPA for all of the reasons outlined in witness Phillips' testimony. (See id. at 302.) In

addition, CIGFUR respectfully reminds the Commission that the Public Staff made identical arguments in support of the SWPA in Docket No. E-2, Sub 1023, all of which were decidedly rejected by the Commission at that time.

A significant portion of Public Staff witness McLawhorn's testimony in support of SWPA rested upon the fact that DEP has been using DWPA and that this Commission recently adopted the SWPA in the DNCP rate case. However, on cross examination, witness McLawhorn conceded that the Company used the SWPA to file reports to this Commission and not as part of its planning process. Witness McLawhorn further acknowledged that the Company had not filed a general rate case in the past 25 years, could not unilaterally change the methodology and, thus, had no choice but to use the SWPA. He further conceded that in its recent rate case, DNCP requested SWPA as its cost allocation model. Moreover, as the Commission noted in its DNCP Rate Order, DNCP's cost of service witness testified that the SWPA methodology more closely matches its production planning process. (DNCP Rate Order, at 21.) This is in contrast to the testimony of Company witnesses Hopkins and Newton, who indicate that the summer peak drives the Company's planning process. ...

...

With respect to the 'averaging' component of the SWPA formula espoused by the Public Staff, that is, the component based upon energy usage, the Commission has two concerns. First, there is inadequate evidence in support of the reliability of the 'weighting' aspect of this formula. This is not a new concern of the Commission. ...

...

Second, the Commission notes that in this case it is undisputed that the Company's revenue request would have been \$20 million higher had it performed its cost allocation on the basis of SWPA.

Order Granting General Rate Increase, Docket No. E-2, Sub 1023, pp. 98-99 (May 30, 2013). Counsel for CIGFUR cross-examined Public Staff witness McLawhorn regarding the absence of any reference to the Commission's conclusions in Docket No. E-2, Sub 1023 regarding the SWPA.

Q. In your arguments supporting your contention that the Commission should reverse past precedent as to the SWPA, you cite to a number of past Commission cases and precedent; do you not?

A. I do, yes. Including their most recent – well, that's – I'm sorry, that's not in the DEC case, sorry.

Q. Did you cite to the last time that the SWPA issue was fully litigated in a Duke rate case, specifically Docket Number E-2, Sub 1023?

A. No. I was the witness in that case. That was a DEP case, and I testified and recommended that the DEP, or Progress at the time, maintained the use of the summer/winter peak and average methodology, which they had had for a number of years prior to that. That was after the merger of Progress Energy and Duke Energy Carolinas. The Company, in their rate case, requested that the Commission approve the SCP methodology, and the Commission agreed with the Company in that case. So that did not support my position, so I did not cite that.

Q. Okay. So that's why you didn't include that one in your testimony here in support of SWPA, because it contradicted your recommendation?

A. I think most witnesses include testimony that supports their position and not testimony that does not agree with their position in any case.

(Tr. vol. 15, pp. 1059-60.)

The CIGFUR Stipulation provides that DEP and CIGFUR agree to meet prior to the Company's next general rate case to discuss potential cost of service methodologies that the Company may—but is not required to—recommend for the purpose of allocating generation and transmission costs. (CIGFUR Stipulation, § V.A.) In addition, the parties agreed that in its next rate case, DEP should file the results of a class cost of service study with production and transmission costs allocated on the basis of the Summer/Winter Coincident Peak Method in its next rate case. That is not to say, necessarily, that such

method will or will not be the method advanced by the Company in its next general rate case, but rather, that it will be one of many cost allocation methods the Company has agreed to investigate prior to its next rate case. And it most definitely does not mean that such method is in any way preordained or binding on any of the other parties or the Commission in future rate cases.

It bears emphasizing that as part of the Second Stipulation, the Company has agreed to evaluate no fewer than six (6) different cost allocation methodologies. The provisions in both the Second Stipulation and the CIGFUR Stipulation to perform various cost of service studies are in no way an outlier or otherwise outside the course of ordinary business as usual. Likewise, such provisions are not inconsistent with past precedent, particularly given that the Company routinely files multiple cost-of-service studies as part of its application filing in general rate cases. For example, in the instant case, the Company filed SCP, WCP, and SWPA, but only recommends one methodology; in this case, it was the SCP.

For all these reasons, the CIGFUR Stipulation is just and reasonable, in the public interest, and should be accepted in its entirety.

Allocation of Distribution Costs

The minimum system method has long been used in the cost of service study to ascertain which incurred costs are customer-related, and then are used to design and set rates accordingly. The Company has filed minimum system study results in every rate case for decades, and the Commission has established a long-standing precedent of approving same. Moreover, at the Commission's directive, the Public Staff studied and published a 78-page report on the minimum system methodology on March 28, 2019, in

which it concluded that “[w]hile not precise, MSM is a logical methodology for classifying costs of a distribution system as demand- or customer-related.” (Ex. Vol. 11, 1266.)

The evidence presented in these proceedings intimating that the minimum system method is somehow flawed is unpersuasive, and the Commission should reject this position and instead accept the minimum system as appropriate for cost allocation in this proceeding. Moreover, the Commission should accept the provisions in the CIGFUR Stipulation related to the minimum system method. As agreed pursuant to the CIGFUR Stipulation, the Company will propose to allocate distribution expenses using the minimum system method. (CIGFUR Stipulation, § V.D.) In the event the Commission orders a different approach for allocating distribution expenses, the Company may, but is not obligated to, propose the minimum system method. (See id.) By approving the CIGFUR Stipulation, the Commission would in no way be bound to continue using the minimum system method in the future. However, it should be noted that DEP has used the minimum system method for decades and has strongly advocated for its continued use any time it has been challenged. As with other provisions of the CIGFUR Stipulation already addressed herein, no provision of the CIGFUR Stipulation binds the Commission to specific cost allocation methodologies or rate design decisions in future rate cases.

For all these reasons, the CIGFUR Stipulation is just and reasonable, in the public interest, consistent with overwhelming past precedent, and should be accepted in its entirety.

Curtable/Non-Firm Load

In the CIGFUR Stipulation, DEP also agreed that in its next rate case, it will adjust its peak demand to remove curtable/non-firm load, even if it does not call this load.

(CIGFUR Stipulation, § V.B.) This means quite simply that DEP has agreed merely to propose use of this adjustment in its next rate case; this provision in no way binds the Commission to use or approve such adjustment, and the Public Staff—or any other intervenor—is free to challenge such adjustment at the appropriate time, which is not now given that Public Staff witness Floyd's testimony objecting to this provision of the CIGFUR Stipulation is premature and this issue is not yet ripe for review and determination by the Commission.

Witness Phillips credibly and convincingly provided support for this provision of the CIGFUR Stipulation when he testified that if the Company has curtailable load, it does not need to build or buy capacity to serve that load, and thus it is appropriate to remove that load from the demand allocator. (See Tr. vol. 14, 337-38.) Moreover, witness Phillips correctly noted in his testimony that the objection witness Floyd attempts to raise prematurely in this proceeding because the finer details of such a future proposal to be made by DEP in its next rate case need to be “discussed and hammered out. And we don’t have a proposal before us today with testimony explaining it, and that’s why I’m hesitant to prolong this, because I don’t think this issue is before the Commission now.” (Id. at 338.)

RATE DESIGN

As a guiding principle for rate design generally, witness Phillips testified that “in designing individual tariffs, the goal should [] be to relate the rate design to the cost of service so that each customer’s rate equals, to the extent practicable, the utility’s cost of providing that service.” (Id. at 294.) Relying on this basic principle of cost of service as the primary factor in rate design results in rates that are equitable, efficient (from a

cost-minimization and energy-usage perspective), and stable. (See id.) Demand response rates, including innovative interruptible rates, are especially appropriate in times of rising costs, increasing demand, and diminishing excess capacity.

The rate design provisions contained within the CIGFUR Stipulation serve the public interest in that they will allow for collaborative, constructive conversations between CIGFUR and the Company in furtherance of the goal to design rates that benefit the system, and thus all ratepayers, as follows:

- a. More accurately reflect fuel costs by time of day and season and charge customers for the actual cost of fuel in a more precise manner than would be possible using an annual average uniform charge on all energy;
- b. Promote demand-response mechanisms that offer lower rates for metered decreases in demand when reductions in demand are in the economic and operating interests of the Company and, thus, the financial interests of ratepayers;
- c. Allow for trade-offs between reliability and economic considerations that industrial, high-load factor ratepayers can weigh through interruptible rates, benefitting both the Company and all classes of ratepayers;
- d. Include real-time pricing with attendant options and risk variations; and
- e. Reflect that some industrial, high-load factor ratepayers have independent back-up and/or cogeneration resources.

In Section V.F. of the CIGFUR Stipulation, CIGFUR and DEP agree that for the LGS, LGS-TOU, and LGS-RTP Schedules, the on-peak and off-peak energy charges shall be increased by a percentage that is less than half of the approved overall percentage increase (exclusive of any EDIT decrements). The parties further agreed that

the demand charges for each of the LGS, LGS-TOU, and LGS-RTP rate schedules shall be adjusted by the amount necessary to recover that schedule's respective final revenue target. (See Tr. vol. 14, 293, 310.)

None of the rate design provisions contained within the CIGFUR Stipulation bind the Commission to rule or not rule in any way in future rate cases, nor do they even require the Company to propose certain rate tariffs unless, through the comprehensive rate design study process, the Company concludes such a rate would be appropriate and is about to reach agreement with CIGFUR regarding the terms of such rate. Moreover, witness Phillips testified that the energy charges for the LGS Schedule are priced significantly higher than unit costs for energy, and therefore, advocated that the stipulated changes to the LGS, LGS-TOU, and LGS-RTP Schedules constitute a graduate move closer to actual cost. Importantly, no intervenor offered any testimony challenging these provisions of the CIGFUR Stipulation.³

For all these reasons, the CIGFUR Stipulation is just and reasonable, in the public interest, and should be accepted in its entirety.

Excess Deferred Income Tax (EDIT) Rider

The CIGFUR Stipulation further provides in pertinent part that unprotected EDIT should be returned to customers on a uniform cents-per-kilowatt-hour (cents/kWh) basis. (See CIGFUR Stipulation, § IV.) Subsequently, the Company and the Public Staff entered into the Second Stipulation, providing in pertinent part that unprotected EDIT should be returned to customers on a levelized basis. (See Second Stipulation, § III.A. 2, 3; Tr. vol.

³ Public Staff witness Floyd contained his objections to the non-EDIT related rate design settlement provisions to those contained within DEP's settlements with Harris Teeter and the Commercial Group, respectively, although he later backed off his own initial reactionary concerns with those settlements. (See Tr. vol. 15, 1005-06; but see id. at 1126-27.)

4, 69.) Despite the Public Staff's consternation to the contrary during the hearings, there is nothing at all inconsistent between these two provisions governing the return of unprotected EDIT contained in the CIGFUR Stipulation and Second Stipulation, respectively. Moreover, CIGFUR contends that these two methods for refunding unprotected EDIT are not only not mutually exclusive, but rather may both be used concurrently and simultaneously with respect to the Rider EDIT-2—as was done in both DEP's and DEC's most recent rate cases in Docket Nos. E-2, Sub 1142 and E-7, Sub 1146, respectively, without objection by any party and as subsequently approved by the Commission.

Indeed, the Rider EDIT-1 approved in DEP's last general rate case conclusively shows that it is in fact, despite contrary assertions advanced by the Public Staff in this rate case, entirely plausible to have an EDIT decremental rate rider that is both levelized (over a period of years) and refunded on a uniform cents/kWh basis. It is not, as the Public Staff would have this Commission believe, contradictory to design a rider that on a cents/kWh basis that is levelized over the duration (in years) of the rider. This excerpt from DEP's Compliance Exhibit No. 6 filed in the DEP rate case renders the Public Staff's arguments in the instant case invalid and without merit.

Duke Energy Progress, LLC
Docket E-2, Sub 1142
Derivation of Rider EDIT-1 Decremental Rate

Mar 02 2018

<u>Description</u>	<u>Source</u>	<u>Derivation</u>
1 Levelized Annual EDIT Rider Credit	Per Peedin Revised Exhibit 2, Schedule 1, Line 7	\$ (42,577,000)
2 Adjusted test period kWh sales per Settlement	Per Bateman Calculation	37,312,555,626
3 EDIT Rider \$ per kWh	Line 1 / Line 2	\$ (0.00114)

DEP's Compliance Filings, Compliance Exhibit No. 6 – Derivation of EDIT-1 Decremental Rate, Docket No. E-2, Sub 1142 (March 2, 2018). “This exhibit provides [DEP's] derivation of the decremental rate under Excess Deferred Income Tax Rider EDIT-1 pursuant to Ordering Paragraph 4. The Excess Deferred Income Tax Rider is a decremental rate of 0.114 cents per kWh and is applicable to all retail sales for four years” (emphasis added). (Id. at DEP's Compliance Filings, Cover Letter, p. 2.)

CIGFUR contends that by approving the uniform cents-per-kilowatt hour refund of EDIT to customers, as agreed to in the CIGFUR stipulation, the different customer classes are moved closer to parity with the actual costs to serve each class. This position was credibly and convincingly supported by DEP witness Pirro, who testified that residential customers have historically been subsidized by other customer classes, and that the proposed rate design of the EDIT Rider helps offset this subsidy. (Tr. vol. 11, 1091, 1164; see also Pirro Ex. 5.) CIGFUR witness Phillips supported the positions taken by DEP

witness Pirro, agreeing that the proposed rate design of the EDIT Rider reduces subsidies uniformly by 25% and moves rates closer to cost for all customer classes. (Tr. vol. 14, 358-59; see also id. at 344.)

Moreover, the EDIT Rider presents an unique opportunity to bring the parties closer to parity without necessitating a higher bill for the residential class—as would be the case if a different method of bringing the classes closer to parity were employed, such as with an increase to the Basic Facilities Charge (BFC)—given that the EDIT Rider involves a bill credit, not a charge. In other words, flowing back EDIT as a credit to customers on a uniform cents per/kWh basis allows for more accurate price signals to be sent to each respective class without violating principles of gradualism or raising any concern regarding rate shock to the residential class.

It should be noted that DEP did not propose an increase to the BFC in this rate case, even though the COSS justified same and such an increase would move the residential class closer to cost. DEP witness Pirro provided compelling testimony on this topic:

Q And recognizing that the Company did not propose an increase in the Residential basic facilities charge in this case, you nevertheless testified that the unit cost study from the cost of service study would justify an increase to the basic facilities charge; is that right?

A Had we decided to increase the basic facilities charge, yes, the unit cost study would have shown an increase is warranted.

(Tr. vol. 11, 1218.)

Q Okay. And can you tell me why the Company decided to leave the basic facilities charge at its current rate?

A Yes. As mentioned yesterday during Mr. De May's testimony, the Company is in full support of a low-income collaborative to address those concerns. This was a very contentious issue in the previous case, and the Company elected just to go down the path of a low-income collaborative.

(Id. at 1244.)

In addition, refunding the EDIT on a levelized, uniform cents/kWh basis aligns with principles of “gradualism” while also moving overall rates closer to a more cost-justified rate parity with appropriate and accurate price signals to all customer classes. Moreover, the Company has in the past refunded unprotected EDIT to customers using this same levelized and uniform cents/kWh method as recently as Docket No. E-2, Sub 1142.

No party has presented a compelling reason to depart from past precedent, and any argument that the CIGFUR Stipulation and Second Stipulation between the Public Staff and the Company are somehow inconsistent with respect to EDIT treatment is entirely without merit. Given the fact that the CIGFUR Stipulation was filed in these dockets months before the Second Stipulation, such an argument presumes that both the Public Staff and the Company would knowingly and voluntarily agree to enter into a settlement that would undermine or otherwise contradict an existing and no less binding and enforceable settlement agreement. Such an argument is simply misplaced.

CONCLUSION

For the foregoing reasons, CIGFUR contends that the CIGFUR Stipulation is nothing but a compilation of widely accepted, previously litigated, and Commission-sanctioned principles and methodologies. The Public Staff's objections to the CIGFUR Stipulation CIGFUR respectfully recommends that (1) the Commission

accept and approve the CIGFUR Stipulation in its entirety; and (2) the Commission impose certain GIP reporting requirements, including those criteria set forth herein.

Respectfully submitted, this the 4th day of December, 2020.

CIGFUR II

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CERTIFICATE OF SERVICE

The undersigned attorney for CIGFUR II hereby certifies that she caused the foregoing *Post-Hearing Brief of CIGFUR II* to be served upon the parties of record in this proceeding by electronic mail.

This the 4th day of December, 2020.

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