

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. G-9, SUB 781

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Application of Piedmont Natural Gas  
Company, Inc. for General Rate Increase

MOTION FOR SPECIAL  
ACCOMMODATIONS FOR CIGFUR IV  
WITNESS NICHOLAS PHILLIPS, JR.

NOW COMES the Carolina Industrial Group for Fair Utility Rates IV (CIGFUR) in the above-captioned docket, by and through undersigned counsel and pursuant to Commission Rule R1-7, and respectfully moves for special accommodations for CIGFUR witness Nicholas Phillips, Jr. at the expert witness evidentiary hearing scheduled in these dockets, by allowing him to appear and testify remotely in such hearing. In support of this motion, CIGFUR respectfully shows unto the Commission as follows:

1. On March 22, 2021, Piedmont Natural Gas Company, Inc. (Piedmont) filed its rate case application in the above-referenced docket.
2. On April 9, 2021, the Commission issued an order granting CIGFUR's petition to intervene.
3. On June 8, 2021, the Commission issued an order scheduling expert witness to be held in person, calendaring the expert witness hearing on Piedmont's rate case application to be held on September 7, 2021.
4. On August 11, 2021, CIGFUR caused to be filed in these dockets the *Direct Testimony of Nicholas Phillips, Jr. on Behalf of CIGFUR IV*, as amended by an errata filing on August 16, 2021.

5. As a result of the Commission's scheduling order on June 8, 2021, CIGFUR was planning to arrange for witness Phillips to travel to North Carolina and attend the expert witness hearing in this matter in person, particularly given the relatively improved Coronavirus Disease 2019 (COVID-19) pandemic outlook at that time. However, the circumstances surrounding the COVID-19 pandemic at the local, State, and national levels have drastically worsened since the United States entered its fourth wave of COVID-19 infections this summer,<sup>1</sup> to the point that it would now pose a grave risk to witness Phillips' health, safety, and welfare if he were to attend the upcoming hearing in person.

6. Pursuant to Governor Cooper's July 29, 2021 Executive Order No. 224,<sup>2</sup> the State of North Carolina remains under a declaration of a State of Emergency related to the COVID-19 pandemic. In addition, Executive Order No. 224 provides in pertinent parts as follows:

- a. "[B]ecause the Delta variant is more contagious than the original virus or other current COVID-19 variants, it quickly became the most common kind of COVID-19 in North Carolina during summer 2021, and now, the Delta variant makes up more than eighty percent (80%) of all new COVID-19 cases in North Carolina;" and
- b. "[T]he Delta variant's growing dominance, coupled with its increased transmissibility, has led to a significant increase in the number of COVID-19 cases and hospitalizations[.]"

7. On August 6, 2021, Governor Cooper issued Executive Order 225,<sup>3</sup> in which Governor Cooper declared in relevant parts as follows:

- a. "[A]s of the date of this Executive Order, the state is experiencing rapidly increasing rates of the percent of emergency department visits that are due to COVID-19-like illness, the daily number of new diagnosed COVID-19 cases,

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<sup>1</sup> See, e.g., Chris Wilson, "Driven by the Delta Variant, the Fourth Wave of COVID-19 in the U.S. Could Be Worse Than the Third. In Some States, It Already Is," TIME (August 16, 2021), available at <https://time.com/6090218/fourth-wave-surpassed-third-in-some-states/>.

<sup>2</sup> Available at <https://files.nc.gov/governor/documents/files/EO224-COVID-19-Measures.pdf>.

<sup>3</sup> Available at <https://governor.nc.gov/media/2691/open>.

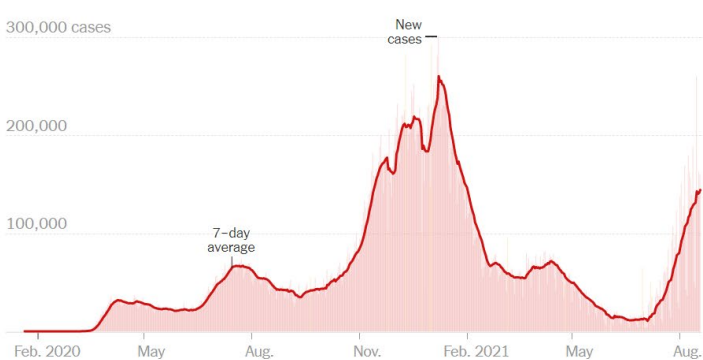
the percent of total COVID-19 tests that are positive, and the number of COVID-19 hospitalizations;”

- b. “COVID-19 continues to inflict an unprecedented toll on human life in North Carolina;” and
- c. “[M]ore than one million seventy-one thousand (1,071,000) people in North Carolina have been diagnosed with COVID-19, and more than thirteen thousand seven hundred (13,700) people in North Carolina have died from the disease[.]”

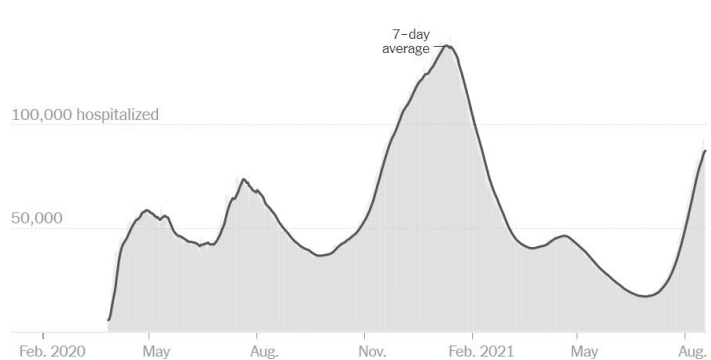
8. As of the date of this filing, the fourth wave of COVID-19 does not yet appear to have peaked, meaning the number of infections, hospitalizations, and deaths attributable to COVID-19 are continuing to increase:

**U.S. trends**

**New reported cases by day**

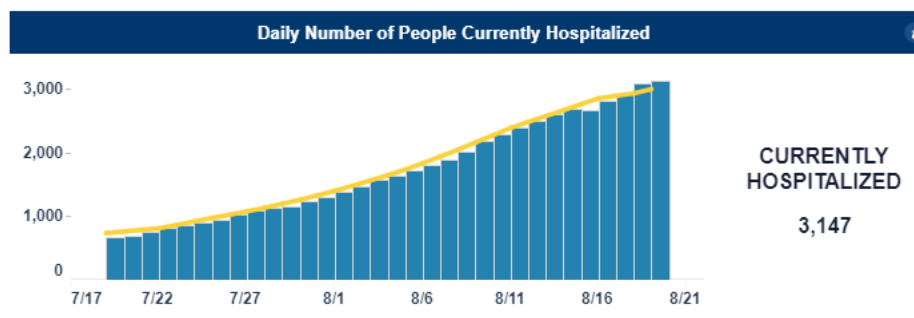
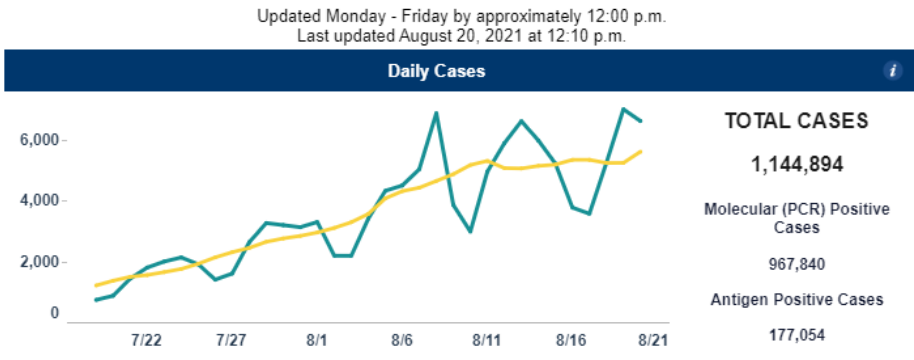


**Hospitalizations**

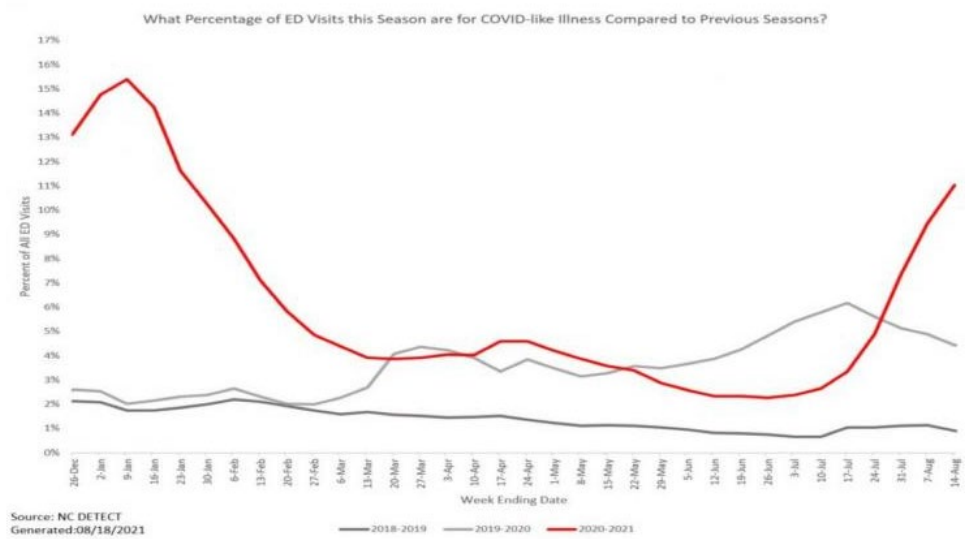


<sup>4</sup> Available at [https://www.nytimes.com/interactive/2021/us/covid-cases.html?pageType=LegacyCollection&collectionName=Maps+and+Trackers&label=Maps+and+Trackers&module=hub\\_Band&region=inline&template=storyline\\_band\\_recirc](https://www.nytimes.com/interactive/2021/us/covid-cases.html?pageType=LegacyCollection&collectionName=Maps+and+Trackers&label=Maps+and+Trackers&module=hub_Band&region=inline&template=storyline_band_recirc).

9. Since the issuance of Executive Orders 224 and 225, the COVID-19 metrics in North Carolina continue to worsen. As of today, the NC Department of Health and Human Services posted the following pertinent data on its website:



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<sup>5</sup> Available at <https://covid19.ncdhhs.gov/dashboard>.

10. Witness Phillips resides in the St. Louis, Missouri area. The only feasible method of travel for witness Phillips to make the trip between St. Louis and Raleigh is by air. Due to the decreased frequency of available flights between St. Louis, MO and Raleigh, NC as a result of COVID-19's impact on consumer travel habits and the resulting effect such change has had on the airline industry, witness Phillips expects that round-trip air travel between St. Louis and Raleigh would take approximately six (6) hours of flight time each way, which would necessitate close contact with other people (i) on at least four (4) separate airplanes (i.e. a layover with a connecting flight each way); and (ii) in at least six (6) separate airports (i.e. STL Airport → connecting airport → RDU Airport on the way to Raleigh; RDU Airport → connecting airport → STL Airport on the return trip). Given the current prevalence and incidence of COVID-19 in the United States, Witness Phillips' risk of exposure to COVID-19 if he were to undertake a travel itinerary described herein would be extremely high.

11. Witness Phillips is 75 years old and will turn 76 in a few months. His age alone puts witness Phillips at significantly increased risk for severe illness or death should he be exposed to and become infected by COVID-19. Moreover, witness Phillips' medical doctor has advised him that, because of his age, it is not safe for him to fly and/or to be in an airport while the COVID-19 Pandemic is ongoing.

12. Witness Phillips' spouse, with whom he resides and for whom he serves as a caregiver, also is in her 70s. In addition, witness Phillips' spouse suffers from pre-existing medical conditions that, in addition to her age, put her at further increased risk of severe disease or death from COVID-19. As a result, travel to North Carolina poses a significant risk to both witness Phillips' individual health, safety, and welfare, in addition to that of his immediate family.

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<sup>6</sup> Available at <https://covid19.ncdhhs.gov/dashboard/cli-surveillance>.

13. While witness Phillips has received a first and second booster vaccination against COVID-19, breakthrough cases of COVID-19 in fully vaccinated people continue to increase. In addition, Mayo Clinic researchers have found that COVID-19 vaccine protection wanes over time, particularly as against the Delta variant.<sup>7</sup> The White House and Centers for Disease Control have since announced that a third booster shot of the COVID-19 vaccine will be necessary, with initial distribution of a third booster shot tentatively scheduled to begin in September 2021.<sup>8</sup>

14. Witness Phillips' testimony is important to CIGFUR's participation as an intervening party in these dockets; however, the requirement for witness Phillips to appear in person would put witness Phillips at risk for contracting and potentially becoming seriously ill from COVID-19. Therefore, in the interest of the public health, safety, and welfare, CIGFUR respectfully submits that allowing witness Phillips to testify remotely in the evidentiary hearing in this proceeding would be an appropriate and reasonable accommodation.

15. In addition to the special accommodation requested for witness Phillips, allowing for remote attendance by witnesses and/or counsel would help to limit the number of people present in the hearing room, thus reducing the risk for exposure to COVID-19.

16. In the event that the Commission allows witness Phillips to participate remotely, CIGFUR will ensure that witness Phillips has access to high-speed internet connections that allow him to participate with clear video and audio connections.

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<sup>7</sup> See, e.g., "Moderna may be superior to Pfizer against Delta; breakthrough odds rise with time," Reuters (August 9, 2021), available at <https://www.reuters.com/business/healthcare-pharmaceuticals/moderna-may-be-superior-pfizer-against-delta-breakthrough-odds-rise-with-time-2021-08-09/>

<sup>8</sup> See, e.g., Berkeley Lovelace, Jr., "U.S. will begin wide distribution of Covid booster shots next month, saying vaccine protection wanes over time," CNBC (August 18, 2021), available at <https://www.cnbc.com/2021/08/18/covid-booster-shots-us-to-begin-wide-distribution-of-third-vaccine-doses-next-month.html>.

17. The circumstances here are extraordinary, and the interests of public health, safety, and welfare justify these special accommodations for witness Phillips.

18. CIGFUR has consulted with all other parties to these dockets regarding its Motion for Special Accommodations for witness Phillips, and no party has indicated any objection to CIGFUR's request for relief set forth in this motion.

WHEREFORE, for the foregoing reasons, CIGFUR respectfully requests that the Commission grant its motion for special accommodations to allow witness Phillips to testify remotely in the expert witness evidentiary hearing in these proceedings.

Respectfully submitted, this the 20<sup>th</sup> day of August, 2021.

**BAILEY & DIXON, LLP**

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

The undersigned attorney for CIGFUR IV hereby certifies that she this day caused the foregoing *Motion for Special Accommodations for CIGFUR IV Witness Nicholas Phillips, Jr.* to be served upon the parties of record in this proceeding by electronic mail.

This the 20<sup>th</sup> day of August, 2021.

/s/ Christina D. Cress  
Christina D. Cress