

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 178**

In the Matter of:)	
Rulemaking Proceeding to)	NCSEA’S INITIAL COMMENTS
Implement Performance-Based)	ON COMMISSION QUESTIONS
Regulation of Electric Utilities)	RELATED TO CERTIFICATES
)	OF PUBLIC CONVENIENCE AND
)	NECESSITY

**NCSEA’S INITIAL COMMENTS ON COMMISSION QUESTIONS RELATED
TO CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY**

The North Carolina Sustainable Energy Association (“NCSEA”) offers these comments, pursuant to the February 10, 2022 *Order Adopting Commission Rule R1-17B* issued by the North Carolina Utilities Commission (“Commission”), regarding the relationship between a certificate of public convenience and necessity (“CPCN”) and performance-based regulation (“PBR”) and multi-year rate plans (“MYRP”). While NCSEA addresses the Commission’s specific questions below, NCSEA notes its belief that the issues raised by the Commission are not yet ripe.

I. WHETHER THE COMMISSION MAY APPROVE COST RECOVERY WITHIN A MYRP FOR CAPITAL PROJECTS FOR WHICH A CPCN IS REQUIRED BUT HAS NOT BEEN GRANTED AS OF THE DATE THE PBR APPLICATION IS APPROVED

NCSEA does not believe that the Commission should approve cost recovery within a MYRP for capital projects for which a CPCN is required but has not been granted as of the date the PBR Application is to be approved. Such approval would be too speculative and create risk for ratepayers. Given the realities of the timeframes to interconnect new generation to the grid, whether it be the study process or the time to construct network upgrades, it is unlikely that a capital project that has not yet obtained a CPCN “will be used and useful during the rate year” as required by N.C. Gen. Stat. § 62-133.16(c)(1)a. As such,

NCSEA believes it would be inappropriate for the Commission to approve cost recovery within a MYRP for capital projects for which a CPCN is required but has not been granted.

II. IF A CAPITAL PROJECT IS APPROVED FOR COST RECOVERY IN AN APPROVED PBR APPLICATION AND A CPCN HAS NOT BEEN GRANTED, WHETHER THE APPROVAL OF THE PROJECT IN THE PBR APPLICATION BE CONSIDERED IN THE CPCN APPROVAL PROCESS

NCSEA does not believe that a capital project's inclusion in an approved PBR Application should be considered in the CPCN approval process. The fact that a capital project is approved for cost recovery in an approved PBR Application does not mean that the capital project will be needed. It has historically been difficult for utilities to accurately forecast loads, which then dictate the need for new generation.¹ Accordingly, Commission Rules R8-61 and R8-63 require an applicant for a CPCN demonstrate a need for the proposed facility. However, approval for cost recovery in an approved PBR Application is not the same analysis as the Commission determining that the electric grid needs a facility's energy and capacity. NCSEA does not believe that a capital project's inclusion in an approved PBR Application should be considered in the CPCN approval process; instead, proposed capital projects should still need to independently demonstrate the need for their facility in order to obtain a CPCN.

¹ See, e.g., *Order Accepting Integrated Resource Plans and Accepting REPS Compliance Plans* at 15, Docket No. E-100, Sub 147 (June 27, 2017); *Order Accepting Integrated Resource Plans and REPS Compliance Plans, Scheduling Oral Argument, and Requiring Additional Analyses* at 87-89 and Appendix A, Docket No. E-100, Sub 157 (August 27, 2019); and *Transcript of Hearing Held in Raleigh on January 8, 2020*, Docket No. E-100, Sub 157 (January 21, 2020).

III. WHETHER THE PARTIES ANTICIPATE THAT A PBR APPLICATION COULD REQUEST COST RECOVERY APPROVAL FOR CAPITAL PROJECTS WHICH THE UTILITY FILING THE PBR APPLICATION DOES NOT YET OWN, AND THEREFORE, FOR WHICH A PARTY OTHER THAN THE UTILITY FILING THE PBR APPLICATION WOULD BE FILING THE APPLICATION FOR THE CPCN

NCSEA believes that the issue of whether a PBR Application could request cost recovery for capital projects for which a party other than the utility would be applying for a CPCN is not ripe yet. Section 1.(2).b. of Session Law 2021-165 states that “fifty-five percent (55%) of the total MW AC of any solar energy facilities established pursuant to this section shall be supplied from solar energy facilities that are utility-built or purchased by the utility from third parties and owned and operated and recovered on a cost of service basis by the soliciting electric public utility.” However, the Commission has not yet provided guidance on how solar installations “purchased by the utility from third parties” are to be acquired. Such installations could be acquired by a build-own-transfer method, whereby the independent power producer would be responsible for obtaining the CPCN, or by an engineering, procurement, and construction method, whereby the utility would presumably be responsible for obtaining the CPCN. Given that the Commission has not provided guidance on how such projects are to be acquired, NCSEA does not believe the issue is ripe.

Consistent with NCSEA’s response in Section I of these comments, NCSEA believes that it is highly unlikely that a project that has not obtained a CPCN, by either a utility or an independent power producer, prior to the filing of a PBR Application will become “used and useful” within the 3-year pendency of a MYRP. Therefore, it is unlikely that such a project would be eligible for cost recovery within an MYRP. However, if a CPCN for a particular project is to be obtained prior to approval of cost recovery within a

MYRP, whether obtained by the utility that later files the PBR application or by an independent power producer, such project could still be appropriately included in a PBR Application subject to further Commission guidance.

Respectfully submitted, this the 16th day of March, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing filing by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 16th day of March, 2022.

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