

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100 SUB 178

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	SUPPLEMENTAL
Rulemaking Proceeding to Implement)	REPLY COMMENTS
Performance Based Regulation of)	OF THE
Electric Utilities)	ATTORNEY GENERAL'S OFFICE

The North Carolina Attorney General's Office (AGO) respectfully submits these supplemental reply comments on proposed rules for the implementation of performance-based regulation (PBR) pursuant to N.C. Gen. Stat. § 62-133.16, as authorized by the Commission's December 30, 2021 Order. In these supplemental comments, the AGO supports those recommendations of other intervenors which align with the AGO's position, and further, the AGO responds to Duke's objections.

I. THE AGO SUPPORTS THOSE RECOMMENDATIONS OF OTHER INTERVENORS WHICH ALIGN WITH THE AGO'S POSITION.

First, the AGO stands by the recommendations made by the AGO in reply comments and proposed rules submitted December 17, but also commends and supports positions taken in the December 17 joint reply comments filed by CIGFUR, CUCA, NCSEA, NC Justice Center, NC Housing Coalition, Sierra Club, and SACE. Further, the AGO supports many of the recommendations of the Public Staff. In large part, these parties align in recommendations¹ and,

¹ As noted in its reply comments, however, the AGO does not agree that it is appropriate to

where there are differences, the Commission may choose between good alternatives that are intended to achieve the same purposes.

II. THE AGO RESPONDS TO DUKE'S OBJECTIONS.

Second, the AGO responds to certain objections Duke has lodged regarding the AGO's reply comments, as follows:

A. Duke's Objection To Capping Revenue Increases At 4%.

Duke indicates it will object to the AGO's recommendation that revenue increases be capped at 4% for each rate class during a multi-year rate plan. The revenue increases allowed under the PBR multi-year rate plan apply *on top of* the revenue increase authorized under traditional ratemaking. Thus, Duke's objection indicates that Duke plans to seek rate increases for some customers (most likely residential customers)² that are more burdensome than a 4% cap would allow. The AGO believes that a rule limiting the PBR impact to 4% for all customers is reasonable and is consistent with the statutory intent.

B. Duke's Objection To Prioritizing PBR Proposals That Are Optimal In Timing, Generation, and Resource-Mix.

Duke also indicates it will object to the AGO's recommendation that PBR proposals should be prioritized that are "optimal in timing and generation and resource-mix for advancement of the utility's carbon plan and effective for integrated resource planning purposes." The wording suggested by the AGO is intended to correlate to the requirement in subpart (4) of HB 951 Part I, Section

adopt a rule that would allow Duke to continue charging rates or using PBR mechanisms authorized as part of a MYRP beyond the expiration of the MYRP.

² Other provisions that require the Commission to allocate costs using a particular method will likely impose greater cost increases on residential customers than on other rate classes.

1, where the Commission is directed that, in achieving the authorized carbon reduction goals, it shall “[r]etain discretion to determine optimal timing and generation and resource-mix to achieve the least cost path to compliance with the authorized carbon reduction goals” The AGO advocates coordination between the use of PBR and the advancement of Carbon policies and notes again that Duke’s initial comments also suggested that this was intended by the legislature.

C. Duke’s Objection To A Thoughtful, Deliberative Process For Developing Goals, Outcomes, And Metrics As A Foundation For PBR.

Duke objects to recommendations made by the AGO and other parties that would provide for a thoughtful, deliberate process for developing goals, outcomes, and metrics as a foundation of performance-based regulation. Duke also objects to a more thoughtful process to identify investment projects that will be eligible for cost recovery in the multi-year rate plans based on forecasts and estimated in-service dates. Duke advocates for an approach that would make it difficult for the Commission and stakeholders to evaluate Duke’s PBR proposals, even less so to recommend alternatives that may be more effective and beneficial for ratepayers. Additionally, Duke proposes light-handed review of the PBR mechanisms during annual reviews. In short, Duke’s objections to a more thoughtful approach to alternative ratemaking – paired with Duke’s proposals for scant annual reviews – suggest that Duke’s aim is to use PBR as a vehicle for frequent rate increases and minimal Commission oversight. Instead, the AGO recommends that the Commission exercise its discretion to

take a deliberative approach to establishing goals and projects, and *not* to allow PBR proposals unless they are in the public interest and meet statutory factors and considerations.

D. Duke's Objection To The AGO's Comments Regarding The Decoupling Mechanism.

Duke indicates that it will object to the AGO's reply comments regarding the decoupling mechanism, particularly with regard to changes in fuel costs. The AGO's reply comments observed that the new PBR statute provides a specific description of how the decoupling mechanism should calculate revenue deferrals (i.e., by comparing "target" revenues established for residential customers in the PBR case to actual revenues experienced each month during the multi-year rate plan), and does not mention that the target revenues established in the PBR case may be adjusted later to reflect changes in fuel costs.³ Duke appears to argue that the Commission is required to infer from the PBR statute that subsequent adjustments for changes in fuel costs under N.C. Gen. Stat. § 62-133.2 must be reflected in target revenues under N.C. Gen. Stat. § 62-133.16(c)(2). The AGO does not agree that such an inference is required or appropriate. However, the AGO is not proposing that the rule be modified to address this specific issue. Instead, the AGO is making the Commission aware that the issue will come up in subsequent proceedings.

³ See N.C. Gen. Stat. § 62-133.16(c)(2).

E. Duke's Objections That Seek To Limit The Parties' Opportunity To Make Recommendations In Reply Comments.

Lastly, the AGO disagrees with Duke's objections that seek to limit the opportunity for parties to make recommendations in reply comments. The Commission has not restricted reply comments in the way Duke advocates, and the AGO believes that there is a benefit to hearing more positions and more exchanges of ideas as parties respond to other comments. More opportunity for collaboration occurs—as occurred here, when some of the parties joined in their reply comments. These are important issues that impact the public and the Commission should consider all the substantive information put before it, whether via initial comments or reply comments, and not disregard comments that are substantive and may impact the Commission's decision due to a procedurally-oriented objection by Duke. Further, it would be particularly inappropriate to limit reply comments in this case because the time for initial comments was very short and the purpose of the rules is to authorize fundamental changes in ratemaking. Moreover, Duke's suggestion that it should have an opportunity to rebut comments of others is not compelling in a rulemaking proceeding, where the utility does not have the burden of proof. In any event, Duke has been provided an opportunity to respond, and the AGO appreciates the Commission's decision to allow supplemental reply comments from all parties.

Respectfully submitted, this the 5th day of January, 2022.

/s/ Margaret A. Force
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CERTIFICATE OF SERVICE

The undersigned certifies that she has served a copy of the foregoing SUPPLEMENTAL REPLY COMMENTS OF THE ATTORNEY GENERAL'S OFFICE upon the parties of record in this proceeding by email, this the 5th day of January, 2022.

/s/ Margaret A. Force
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Special Deputy Attorney General