

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 178

In the Matter of
Rulemaking Proceeding to Implement)
Performance-Based Regulation of) INITIAL COMMENTS OF CUCA
Electric Utilities)

Carolina Utility Customers Association, Inc. (“CUCA”), by and through counsel, respectfully submits these initial comments pursuant to the Commission’s Order Requesting Comments and Proposed Rules issued on October 14, 2021, regarding the adoption of rules to implement the Performance-Based Regulation provisions of House Bill 951 (S.L. 2021-165).¹

BACKGROUND

On October 13, 2021, the Governor signed into law S.L. 2021-165 enacting, among other laws, N.C. Gen. Stat. § 62-133.16, which authorizes Performance-Based Regulation (“PBR”) and requires the Commission to adopt specified rules to implement PBR.

On October 14, 2021, the Commission issued its *Order Requesting Comments and Proposed Rules* (the “PBR Comment Order”). The Commission’s Order made Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Dominion Energy North Carolina parties to the docket, required that petitions to intervene be filed on or before November 9, 2021, requested that comments and proposed rules be filed on or before November 9, 2021, and requested that reply comments be filed on or before December 7, 2021.

¹ CUCA was granted intervention in this proceeding by order issued October 25, 2021.

By statute, PBR is defined as “an alternative rate-making approach that includes decoupling, one or more performance incentive mechanisms, and a multiyear rate plan, including an earnings sharing mechanism, or such other alternative regulatory mechanisms as may be proposed by an electric public utility.” N.C. Gen. Stat. § 62-133.16(a)(7). In turn, each of “decoupling,” “performance incentive mechanism,” and “multiyear rate play” are also defined by statute. *See id.* § 62-133.16(a)(2), (5), (6).

In its Order, consistent with the statutory directive to the same effect (*see* G.S. § 62-133.16(j)), the Commission requested specific comment on:

- (1) The specific procedures and requirements that an electric public utility shall meet when requesting approval of a PBR application;
- (2) The criteria for Commission evaluation of a PBR application;
- (3) The parameters for a technical conference process to be conducted by the Commission prior to submission of any PBR application consisting of one or more public meetings at which the electric public utility presents information regarding projected transmission and distribution expenditures and interested parties are permitted to provide comment and feedback; and
- (4) The process by which an electric public utility may address the Commission’s reasons for rejection of a PBR application, which process may include collaboration between stakeholders and the electric public utility to cure any identified deficiency in an electric public utility’s PBR application.

INITIAL COMMENTS

The General Assembly, in enacting Section 62-133.16, set forth a very detailed description of the PBR process in North Carolina. The procedural details that the legislature proscribed in the statute will greatly aid the Commission in the rulemaking process. Nonetheless, key issues regarding the interpretation of Section 62-133.16 remain, and the Commission will need to resolve these interpretive issues. Some of these interpretive issues

are suitable for resolution in this rulemaking process, whereas some issues may best be resolved if and when the Commission receives a PBR application from an electric utility.

In an effort to assist the Commission in identifying and resolving key interpretive issues as part of this rulemaking process, CUCA has engaged the expert consulting services of Synapse Energy Economics, Inc. Attached to these initial comments are Synapse’s report titled *Implementing PBR with Customer Protections in North Carolina*, along with proposed rules for the Commission’s consideration.

In its report, Synapse notes that the PBR process set forth in Section 61-133.16 deviates from multi-year rate plans in other jurisdictions in meaningful ways. In particular, the statute allows the utility to file a rate case if its return on equity falls below authorized levels—thus omitting the “stay-out period” found in most multi-year rate plans that otherwise assigns some risk to a utility for implementing a PBR plan. Further, in North Carolina, the annual revenue increases will be based on utility cost forecasts, rather than external benchmarks, which erodes the utility’s incentives to constrain spending.

Based on its experience with and study of PBR processes in other jurisdictions, Synapse begins with three general recommendations to guide the Commission’s construction of rules for North Carolina’s PBR process.

- **Cost and planning transparency.** Because rate increases in each year of a multiyear rate plan (“MYRP”) will be based on cost projections, it is critical for the utility’s cost forecasts to be reasonable and in the public interest. Regulators, the Public Staff, and stakeholders, however, have less information regarding utilities’ costs and systems than the utilities themselves—which can make it difficult to assess cost projections. To overcome such information asymmetries, the Commission should require detailed disclosures of utility planning processes and cost information as part of the PBR application.
- **Methodological details.** The PBR application should also include the methodology used by the utility for calculating key metrics, such as the utility’s proposed weather-normalized return on equity.

- **Detailed updates.** If a PBR plan is implemented, the utility should report on any deviations from its cost forecasts. If the utility does not complete projects and underspends its budget, the associated revenues should be returned to ratepayers.

Beyond these overarching recommendations, the report by Synapse also provides detailed recommendations for (1) the contents of a PBR application, (2) criteria for assessing a PBR application, (3) a technical conference prior to the submission of a PBR application, and (4) the process for rejecting a PBR application.

1. Contents of a PBR application.

The information that a utility must provide as part of its PBR application can help resolve the information asymmetries that would otherwise exist in the process. Synapse recommends the following items be included as part of an acceptable PBR application:

- Documentation of the need for all capital projects and, where appropriate, reference to the utility's integrated resource plan or internal capital investment plan.
- A prioritization of projects that accounts for a project's risk reduction.
- Evaluation and documentation of alternatives to the utility's proposed investments.
- Evaluation of how the plan conforms to the utility's Carbon Reduction Plan.
- A cost benchmarking study using data from peer utilities.
- A proposal for the calculation of weather-normalized earnings.
- A proposal for returning any under-spend to customers.
- Annual reports that report unit cost metrics and identify and explain differences between projected investments and actual spending.
- Accompany any performance incentive mechanism (PIM) proposals with estimates of quantitative and qualitative benefits and costs associated with the PIM's targets.

2. Criteria for Evaluating a PBR Application

The PBR statute requires that the Commission approve a PBR application “only upon a finding that a proposed PBR would result in just and reasonable rates, is in the public interest, and is consistent with the criteria established in this section and rules adopted thereunder.”² It also provides that the Commission shall consider whether the PBR application assures that no customer or class of customers is unreasonably harmed, that the rates are fair, and that the application will not result in sudden substantial rate increases to customers.³ Synapse recommends the Commission adopt specific criteria for determining whether a utility’s PBR application meets these standards.

Consistent with this recommendation, Synapse suggests a utility proposing a PBR plan be required to demonstrate that (1) the PBR plan is more likely than current regulation to advance the goals of utility cost control, lower rates, and reduced administrative burden; (2) post-test year cost increases do not exceed forecasts of regional public utility cost escalation rates; (3) the utility appropriately considered and evaluated alternatives to its proposed investments; (4) average customer rates (by class) and bills (for residential customers) will be within a reasonable range of peer utilities’ rates and bills; and (5) the benefits of achieving any approved PIMs are likely to outweigh the costs of doing so, and the targets represent measurable improvements over the utility’s historical or expected performance.

² N.C. Gen. Stat. § 62-133.16 (d)(1).

³ N.C. Gen. Stat. § 62-133.16 (d)(1)(a)-(c).

3. Technical Conference Prior to a PBR Application

To educate the regulators, Commission and stakeholders on the key aspects of any proposed PBR application, the Commission should require that a utility convene a technical conference at least 60 days prior to the utility's submission of a PBR application. As explained in Synapse's report, this technical conference should require the utility to (1) present its proposed investments, including specific details on each large project, (2) summarize the alternatives that it considered, and (3) explain the utility's load forecasting methodology underpinning the need for any load-related investments. Of course, the Commission should reserve the right to ask questions of the utility during the presentations. The Commission's use of a technical conference for the 2020 IRP proceeding is a recent reminder that such structured presentations can be highly informative and efficient.

4. Addressing the Rejection of a PBR Application

Upon the Commission's decision to reject a PBR application, the utility should be required to address each of the Commission's identified deficiencies in a refiled application and work with stakeholders, where appropriate, to remedy those deficiencies. The utility should also be required to respond to discovery requests filed by the Commission or intervenors regarding any modifications made. Stakeholders should then have an opportunity to file responsive testimony addressing whether the utility's modifications to its application are adequate.

CONCLUSION

CUCA respectfully requests that the Commission consider the foregoing Initial Comments and the supporting report and proposed rules prepared by Synapse.

Respectfully submitted, this 9th day of November, 2021.

/s/ Craig D. Schauer

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Certificate of Service

I hereby certify that a copy of the foregoing *Initial Comments of CUCA* has been served this day upon the parties of record in this proceeding by electronic mail.

This the 9th day of November, 2021.

BROOKS, PIERCE, McLENDON,
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/s/ Craig D. Schauer