

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 178

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Rulemaking Proceeding to	)	REPLY COMMENTS AND
Implement Performance-Based	)	REVISED PROPOSED RULE
Regulation of Electric Utilities	)	OF THE PUBLIC STAFF

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and responds to the Commission's October 14, 2021 Order (Order) requesting comments and proposed rules to implement performance-based regulation (PBR) as authorized in N.C. Gen. Stat. § 62-133.16 (Statute). On October 13, 2021, Governor Cooper signed into law House Bill 951 (HB 951) as Session Law 2021 165 (S.L. 2021-165). The Statute, which comprises Part II of HB 951, authorizes the use of PBR for electric public utilities and directs the Commission to adopt rules implementing PBR no later than 120 days after the effective date of S.L. 2021-165.

The day after the enactment of S.L. 2021-165, the Commission issued the Order, with initial comments and proposed PBR rules to be filed by November 9, 2021, and reply comments to be filed by December 7, 2021.

On November 9, the following parties filed initial comments: the North Carolina Retail Merchants Association; Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC (collectively, Duke); the Carolina Industrial Group for Fair

Utility Rates I, II, and III (collectively, CIGFUR); Apple Inc., Meta Platforms, Inc., and Google LLC (collectively, Tech Customers); the North Carolina Sustainable Energy Association (NCSEA); the Carolina Utility Customers Association (CUCA); the City of Charlotte; the NC Justice Center (NCJC), NC Housing Coalition, Sierra Club, and Southern Alliance for Clean Energy (collectively NCJC et al.); and the Public Staff. Dominion Energy North Carolina filed a letter in lieu of comments that, among other things, generally supported Duke's proposed rule.

On November 24, 2021, the Commission granted Duke's Motion to extend the date by which reply comments must be filed to December 17, 2021.

In response to the initial comments filed in this docket, the Public Staff reviewed the initial comments of other parties and engaged in discussion with some of the parties. Based on its review of the other initial comments and proposed PBR rule provisions and discussions with some of the parties, the Public Staff submits the following reply comments and revised proposed rule (Appendix A), as well as a redlined version of its proposed revised PBR rule that shows changes made to the Public Staff's proposed rule filed with its initial comments (Appendix B).

### **General Matters**

1. Between the filing of initial and reply comments, the Public Staff was able to engage in substantive discussions with both Duke and intervenors CUCA, CIGFUR, NCSEA, and NCJC et al. (collectively, "Joint Parties"). The Joint Parties

provided the Public Staff with their proposed PBR Rule for review. While due to time constraints, the Public Staff has not incorporated specific language proposed by the Joint Parties into its PBR Rule, the Public Staff is closely aligned with these parties as to the mechanics of the Rule, and the priorities that the rule should address. In particular, the Public Staff supports: (1) the joint parties' proposal to establish a data dashboard to provide the parties and the public with information to gauge the success of a MYRP; (2) the requirements for provision of data in native format with formulae intact and working macros; (3) the leveraging of government funding and third party investments to achieve policy goals; (4) ensuring that the Technical Conference allows for the sharing of sufficient information by the utility to allow intervenors an opportunity to provide meaningful comment and feedback; (5) emphasizing the need for the proposed decoupling mechanism to benefit ratepayers and not merely protect the utility's earnings; and (6) additional information to be filed in a PBR Application and in the Annual Review regarding PIMs.

### **Rule Numbering**

2. The Public Staff suggested that the PBR rule be included in Chapter 8 of the Commission's Rules captioned "Electric Light and Power" as the PBR rule is only applicable to electric public utilities. Several parties included their proposed PBR rules as subsections of Commission Rule R1-17, "Filing of Increased Rates, Application for Authority to Adjust Rates". The same issue arose in Docket No. W-100, Sub 63, where the water and sewer utilities proposed their multi-year rate

plan rule be included in Chapter 1, while the Public Staff proposed that its rule be included in Chapters 7 and 10, which concern water and sewer utilities. The Public Staff believes it is preferable to include the PBR Rule in Chapter 8 rather than in Chapter 1 because Rule R-1-17 is already rather long and unwieldy. It would be more efficient to place the PBR Rule in Chapter 8 of the Commission's rules.

### Definitions

3. The Public Staff's proposed rule begins with a list of definitions, most of which are taken from S.L. 2021-165. Several parties included definitions that were not included in the Public Staff's proposed PBR Rule. Specifically, Duke included definitions for "Annual Decoupling Verification", "Annual ESM and PIM(s) Review", "Annual ESM and PIM(s) Review Report", "Annual PBR Review Riders", and "Base Year", as well as a definition for "Rate Year" that differs from the Public Staff's proposed definition.

4. NCSEA requested that the definition of Distributed Energy Resource (DER) be clarified to (1) "make clear that the list of technologies specified as DERs in N.C. Gen. Stat. § 62-133.16(a)(3) is not exclusive and that other emerging technologies may be DERs", and (2) recognize that DERs can be utilized by the consumer or utility individually or in aggregate, as was recognized by the Federal Energy Regulatory Commission in Order 2222.<sup>1</sup> NCSEA also recommended that

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<sup>1</sup> *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 85 FR 67094 (Oct. 1, 2020), 172 FERC ¶61,247, at P 1 n.1 (2020), corrected, 85 FR 68450 (Oct. 29, 2020), order on reh'g, Order No. 2222-A, 86 FR 16511 (Mar. 24, 2021), 174 FERC ¶61,197 (2021); 18 CFR 35.28(b)(10).

the definition of multi-year rate plan (MYRP) "should make clear that rate adjustments during a MYRP are to occur annually, coinciding with the rate year, and not at a different periodic interval."

5. NCJC et al. included definitions for "First Year Base Revenues", "First Year Incremental Revenues", "Second Year PBR Revenues", and Third Year PBR Revenues".

6. CUCA included definitions for "Test Year" or "Rate Year One", "Rate Year Two", "Rate Year Three", and "Annual Reconciliation Filing".

7. Should the Commission adopt another party's proposed PBR rule as a foundation for its rule instead of the Public Staff's proposed rule, the Public Staff would not object to the use of any additional definitions that other parties proposed. However, the Public Staff would recommend that the name of the definition of "Annual Decoupling Verification" as proposed by Duke be changed to "Annual Decoupling Review." Until the Commission and parties have been involved in several MYRP annual reviews, it will not be clear exactly what will be required to review the decoupling mechanism and determine the appropriate rider amount. As such, the Public Staff believes that the word "verification" may understate the effort required and recommends that it be called a "review" instead.

### **Adoption of Policy Goals**

8. Section (c) of the Public Staff's PBR Rule lays out a procedure for the Commission to adopt policy goals no less than every three years, so that an

electric utility can propose one or more performance incentive mechanisms (PIMs) targeting a Commission-approved policy goal in its PBR application. Other parties also propose that this policy goal docket also be used to set PIMs and performance and tracking metrics. The Public Staff's PBR Rule provides that adoption of PIMs and any performance and tracking metrics would occur within an individual utility's PBR proceeding, especially since the utility is required to propose one or more PIMs in its PBR application.

9. Duke's proposed rule does not set out a procedure for the Commission to set policy goals on which the utility may base one or more PIMs, despite the statute including "standards the Commission has established by order prior to and independent of a PBR application" as benchmarks for adopting "Policy Goals". Accordingly, it is appropriate for this Commission to have an opportunity to prescribe its current policy goals in an order issued prior to the filing of a PBR Application, as opposed to the utility relying on standards adopted by an earlier Commission in past proceedings, which may be stale or irrelevant to today's circumstances.

### **Technical Conference**

10. Section (d) of the Public Staff's proposed rule sets out the requirements for the PBR Technical Conference. In (d)(1), the Public Staff proposed that the utility request a conference no later than 90 days before it intends to file its notice of intent to file a general rate case that includes a PBR Application. Following discussion with other parties, the Public Staff has revised

the minimum number of days between the request for a technical conference and the notice to 120 to provide for more adequate notice to parties of the Technical Conference.

11. In Section (d)(3)a., the Public Staff listed items the utility should present at the Technical Conference, including cost-benefit analyses. Based on further discussion with parties, the Public Staff has altered its rule to waive this cost-benefit analysis requirement if the project is required by an external law, rule, regulation, or other binding legal obligation.

12. The Public Staff has not proposed that parties be allowed to conduct discovery during the Technical Conference process, but in order for parties to provide feedback and comment, the Public Staff has added a requirement for the utility to file specific information and its presentations for the Technical Conference ten business days prior to the conference.

13. Some parties would require the Commission to authorize capital projects prior to the filing of a PBR Application, possibly combined with the Technical Conference. The Public Staff does not read the Statute to require the approval of capital projects prior to consideration of the MYRP, as the Statute contemplates these projects would be approved during the MYRP application review. Further, if capital projects were to be approved in a proceeding several months prior to the PBR application proceeding, the parties could be required to duplicate efforts, such as reviewing cost information in the initial proceeding and

then having to review updated information due to changes since the earlier proceeding.

### **PBR Application**

14. Section (e) of the Public Staff's proposed rule sets out the filing requirements for a PBR Application. The Public Staff has made revisions to this section to further clarify the information that the utility should file. A new requirement added is that the utility file a depreciation study completed within 180 days of the filing of the PBR Application. The Public Staff believes that in most cases, the utility would file a new depreciation study, but thinks it is important to include this requirement as we are in a period where it is expected that utilities will make considerable capital investments and retire other assets early. Thus, current depreciation studies are necessary to capture the changes in rate base.

### **PBR Procedure**

15. Section (f) of the Public Staff's proposed rule sets out the procedure for consideration of a PBR Application. The Public Staff has made revisions to this section to further clarify the process for review of the PBR Application. The Public Staff also altered Section (f)(9) of its rule to allow the Commission to determine the schedule for the consideration of a refiled PBR application based on the particular facts and circumstances, rather than using the schedule for a general rate case as the default.



## Changes to Authorized Capital Spending Projects

16. Section (i) of the Public Staff's proposed rule sets out certain requirements in the event there are changes to a utility's approved capital spending projects. As the approved capital spending projects are based on estimates of costs and timing, it is unlikely that the estimates will be exactly on target. However, the rates charged to customers will be based on these estimates, and it is unfair for customers to pay for capital spending projects when the costs of projects have declined, either through actual costs being lower than budgeted, cancelation, postponement of the in-service date from one year to another, or substitution of one project for another. Additionally, if projects are canceled or substituted, then the utility should seek approval of its revised plan. Overall, to the extent that the newly calculated total annual revenue requirement for a Capital Spending Project for any of the three MYRP years, as approved by the Commission, is less than the annual revenue requirement previously approved for that project and that year, the Commission would reduce the MYRP portion of base rates effective for any MYRP years affected, and make appropriate provisions to refund the difference, with interest, to the affected customers. (If a Capital Spending Project is approved for substitution for another, the comparison of revenue requirements for each year would be between those two projects.)

17. It is vital that electric public utilities be accountable for material changes to the costs so customers only pay for what they are receiving. As CUCA and NCJC et al. note in their comments, the Statute differs from most other PBR

regimes by primarily basing incremental PBR rates on eligible, capital project cost estimates that are derived using traditional cost of service principles. For example, under the Statute, while a PBR application must include one or more PIMs, the total of all potential and actual PIM incentives or penalties for an electric public utility cannot exceed one percent of the first MYRP rate year revenue requirement.

18. Furthermore, while G.S. § 62-133.16(c)(1)a. limits rate increases in the second and third MYRP rate years to 4% of the first MYRP rate year revenue requirement and while the Earnings Sharing Mechanism (ESM) may capture some of the impact of changes to capital spending projects, the reasonableness of those rates for customers ultimately depends on the reasonableness and accuracy of the utility's capital project planning and cost estimates in its PBR application. In addition, it is unlikely that the ESM will capture all capital spending project changes. The utility should not profit from changes to its capital spending projects. Without requiring refunds to customers for material changes, there is a perverse incentive for the utility to inflate estimates or slow down or cancel projects and reap the benefits. It is incumbent that the Commission include a true up of the estimated and actual costs and return the difference to customers.

### **Annual Review**

19. Section (i) of the Public Staff's proposed rule sets out the requirements and procedures for the annual review of the MYRP, including decoupling, earnings sharing, and PIMs. The Public Staff has made revisions to clarify the requirements for the earnings review to ensure that all earnings are

properly considered. Subsection (6) of Duke's proposed PBR rule requires the Commission, in its order approving or modifying a PBR application, to approve templates for the calculations to adjust the Annual ESM Rider, the Annual PIM(s) Rider, and the Annual Decoupling Rider. Duke further stated having templates approved in the PBR application proceeding will provide the clarity needed for an efficient annual review process. The Public Staff disagrees with the use of templates alone as it believes Duke is oversimplifying the review that will be necessary to validate the estimates the Company proposed in its initial MYRP filing. The simple filing of a template would allow for only a basic mathematical verification, and not the appropriate review of the costs to be included in rates and recovered from customers.

20. Duke's proposed PBR rule provides that the three riders, i.e., decoupling, earnings sharing, and PIM should be calculated using a Commission-approved template. At this early stage of PBR in North Carolina, the Public Staff is concerned that there may be facts and circumstances at the time of the annual review that were unknown when the PBR application was considered and the templates were approved, and believes that these facts and circumstances should be considered when calculating the rider amounts. This is especially true for the calculation of the amount of utility earnings that should be shared. This proposal could be revisited for certain aspects of PBR (particularly decoupling) once the Commission and parties have more experience conducting the annual review.

## **Reporting Requirements**

21. Section (j) of the Public Staff's proposed rule has been revised in to allow an electric public utility to file its first quarterly report 60 instead of 45 days after the end of the three month period. This interval is consistent with that for a utility's E-1 filing. Further, the Public Staff has included requirements for the utility to report changes to approved Capital Spending Projects.

## **Rates Following Expiration of a MYRP**

22. Section (n) of the Public Staff's proposed rule provides that the Year Three base rates should continue after the expiration of a MYRP. Duke's proposed rule also has a similar provision, while several of the other intervenors propose that base rates revert back to those approved under Gen. Stat. § 62-133 in the general rate case accompanying the MYRP. The second sentence of Gen. Stat. § 62-133.16(c)(1)a. includes the language "[subsequent changes in base rates in the second and third rate years of the MYRP . . . ", indicating that the base rates change in each year of the MYRP. Thus, it would be inconsistent to require that the rates be reset to the base rates set in the general rate case instead of continuing at the then existing base rates. Further, the practical effect of setting rates back to those set in the general rate case would likely force the utility to file a rate case.

23. Duke also proposes in its rule that earnings sharing and decoupling should continue after expiration of a MYRP. The Public Staff believes that these

mechanisms would not continue outside of the MYRP as provided by the statute. However, should the Commission determine that decoupling could continue, it would only be appropriate that earnings sharing continue as well.

24. The Public Staff engaged in discussions with CUCA, CIGFUR, NCSEA, and NCJC et al., on this issue. A concern raised with the Public Staff was the possibility of the utility overearning if the rates continued at the rate set in the last year of the MYRP and the difficulty with bringing a utility in for a rate case in such a situation.

25. For instance, in Docket No. E-22, Sub 412, the Public Staff filed a petition to institute an investigation of Dominion North Carolina Power's rates and charges on January 29, 2004, as the Public Staff contended that the Company had been exceeding its authorized rate of return for several years. The Commission granted this petition on April 23, 2004, the Company filed its rate case application on September 24, 2004, and the Commission issued its Order requiring a rate reduction on March 18, 2005, with rates being effective on April 14, 2005. Thus, the process to investigate and reduce rates due to overearning took almost 15 months, with ratepayers paying excessive rates in the interim.

26. To address this concern regarding overearning and the time required to rectify the issue, the Public Staff has included a requirement in Section (o) that the Commission initiate a review of the utility's rates pursuant to its authority under G.S. 62-133.16(e) if the utility indicates that it does not intend to file a rate case application for new rates to go into effect at the expiration of a MYRP.

## Timing of Utilities' MYRP Applications

27. In its initial comments, the Public Staff submitted a proposal for the Commission to require the three investor-owned public utilities to file rate cases a year apart on a predetermined schedule to be set by a Commission order. In its initial comments, Duke states:

An important policy concern for the Commission to consider as it promulgates rules for the Act is the recent proliferation of rate case filings and related rate case costs. Rate cases are time-consuming endeavors for all involved. . . . Benefits [of MYRP] include reducing the frequency of rate case filings before the Commission, lowering the expenses of litigating these rate case filings, increased predictability of rate levels, allowing utilities to focus their efforts and resources on providing safe and reliable service, and administrative efficiency.

Duke Initial Comments, at 6-7. The Public Staff shares these concerns, but notes that nothing in Duke's proposed rules would prevent two or even all three utilities from filing rate cases at the same time.<sup>2</sup> To ensure that the utilities do not pancake their rate cases and exhaust the resources of intervenors and the Commission, the Public Staff continues to support the proposal made in its initial comments that the utilities be required to file rate cases in a designated year if filing their general rate cases with PBR applications pursuant to N.C.G.S. § 62-133.16. The Public Staff believes the administrative efficiency Duke cites as a benefit of these alternative ratemaking mechanisms can best be achieved by setting a predictable schedule for rate cases filed with PBR applications for each of the three investor-owned

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<sup>2</sup> DEP and DEC have filed in close proximity to each other the last two rate case cycles.

electric public utilities rather than allowing the utilities themselves to dictate the schedule.

28. In its initial comments, CIGFUR recommended the adoption of a specification rule provision that would prohibit the electric public utilities from filing PBR cases within 180 days of one another “to avoid what would effectively amount to the rate case litigation equivalent of attrition warfare” if two or three of the utilities filed pancaked general rate cases with PBR applications. CIGFUR Initial Comments at 9-10. NCSEA stated in its initial comments that the Commission rules “should dictate that Duke cannot file a PBR application before January 1, 2023 so that the capital investments that the Commission allows to be recovered via PBR will be informed by the Commission’s Carbon Plan”. NCSEA Initial Comments at 3. NC Justice Center, NC Housing Coalition, Sierra Club, and SACE also stated that the Duke utilities should not file PBR application until the results of the Carbon Plan and the Affordability Collaborative are available.<sup>3</sup>

29. The Public Staff agrees with the other intervenors. If the Duke utilities were to file a rate case in the next 12 months with a capital expenditure plan that varied significantly from the Carbon Plan that the Commission will adopt at the end of 2022, it would be a further waste of the parties’ resources. The Public Staff would be required to investigate the rate case applications filed by the Duke utilities

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<sup>3</sup> NC Justice Center, NC Housing Coalition, Sierra Club, and SACE recommend that the Commission commit to a supplemental rulemaking process to continue after February 10, 2022 and before accepting an application for a multiyear rate plan to address the interplay of PBR with the technical conference regarding projected transmission and distribution expenditures, the upcoming Carbon Plan, and the Affordability Collaborative. Comments of NC Justice Center, NC Housing Coalition, Sierra Club, and SACE at 4.

while at the same time proposing potentially very different recommendations in the Carbon Plan docket. Once the Carbon Plan is adopted, if one of the Duke utilities updated an ongoing rate case filing with a supplemental filing, the Public Staff and other parties would be pressed for time to conduct a proper investigation of the supplemental filing to ensure Carbon Plan compliance and file supplemental testimony.

30. Furthermore, the technical conference required by N.C.G.S. § 62-133.16(j)(3) to address transmission and distribution would be meaningless without the actual approved generation plan. For instance, approval of a plan that utilizes utility brownfields instead of building new transmission to support new carbon-free generation would avoid the need to build or upgrade transmission lines. Thus, the Public Staff further recommends, in addition to a three-year cycle, that the Duke utilities be prohibited from filing a general rate case with a PBR application until adoption of the Carbon Plan. Assuming the notice for a technical conference is made 120 days<sup>4</sup> prior to notice of rate case, the Public Staff recommends that a general rate case with a PBR application be noticed no earlier than April 1, 2023.

31. A proposed schedule is provided below. The Public Staff shared this timing proposal and schedule with many of the intervenors and the following parties authorized the Public Staff to state in this filing that they support the timing

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<sup>4</sup> The Public Staff's proposed Rule, Appendix A to the Public Staff's Initial Comments, stated the Notice for Technical Conference should be 90 days prior to the Notice of Rate Case Filing, but that time period has been changed to 120 days following discussion with Duke.



proposal: CUCA, CIGFUR I, II, and III, NCSEA, and NCJC et al. The Tech Customers have indicated that they are generally supportive of measures to avoid pancaking of proceeding that that help ensure meaningful participation by intervenors. The Public Staff recommends that the Commission adopt the schedule in this proceeding subject to change by further order in this docket, if necessary, or by scheduling order in each rate case docket, as appropriate. It should be noted that this proposed schedule assumes that, if the Commission determines it is appropriate to establish policy goals in a separate docket consistent with the Public Staff's recommendation, that the policy goals will be approved by the Commission prior to the end of 2022.

Filing Date	DEP	DEC	DENC
<b>Commission Carbon Plan Adopted 12/31/2022</b>			
Jan 2, 2023	Notice of Tech Conference		
Jan 1, 2024		Notice of Tech Conference	
Jan 1, 2025			Notice of Tech Conference
<b>+60 days to Technical Conference</b>			
March 3, 2023	Tech Conference		
March 1, 2024		Tech Conference	
March 3, 2025			Tech Conference
<b>Notice of Rate Case Filing- 120 days from Notice of Technical Conference</b>			
May 2, 2023	Notice of Intent to File MYRP		
April 30, 2024		Notice of Intent to File MYRP	
May 1, 2025			Notice of Intent to File MYRP
<b>File General Rate Case + MYRP/PBR Application- 30 days from Notice</b>			
June 1, 2023	Application Filed		
May 30, 2024		Application Filed	
June 2, 2025			Application Filed
<b>+150 days for Intervenor/Public Staff Investigation</b>			
Oct 30, 2023	Intervenor Testimony		
Oct. 28, 2024		Intervenor Testimony	
Oct. 30, 2025			Intervenor Testimony
<b>+21 days for Utility Rebuttal</b>			
Nov. 20, 2023	Utility Rebuttal Testimony		
Nov. 18, 2024		Utility Rebuttal Testimony	
Nov. 20, 2025			Utility Rebuttal Testimony
<b>+14 days to Evidentiary Hearing</b>			
Dec. 4, 2023	Evidentiary Hearing		
Dec. 2, 2024		Evidentiary Hearing	
Dec. 4, 2025			Evidentiary Hearing
<b>Commission Decision - 300 days from Application Filed (assuming no cure period)</b>			
March 27, 2024	Commission Decision		
March 26, 2025		Commission Decision	
March 30, 2026			Commission Decision
<b>+30 days Rates into Effect</b>			
April 26, 2024	Year 1 Rates in Effect		
April 25, 2025		Year 1 Rates in Effect	
April 29, 2026			Year 1 Rates in Effect

## Conclusion

32. The Public Staff respectfully requests that the Commission consider the foregoing Reply Comments and the revised proposed rule.

Respectfully submitted this the 17th day of December, 2021.

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#### CERTIFICATE OF SERVICE

I certify that a copy of these Reply Comments and Revisions to Proposed Rule Proposed Rule has been served on all parties of record or their attorneys, or both, in accordance with Commission Rule R1-39, by United States Mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 17th day December, 2021.

Electronically submitted  
/s/ Lucy E. Edmondson  
Staff Attorney

## Rule R8-\_\_\_\_. PERFORMANCE BASED RATEMAKING.

(a) Purpose. – The purpose of this rule is to establish procedures and guidelines for the implementation of performance-based regulation of electric public utilities consistent with G.S. § 62-133.16.

(b) Definitions. – As used in this rule:

- (1) "Capital Spending Project" means the acquisition, construction, installation, retrofitting, rebuilding, or any addition to or improvement of any equipment, device, structure, facility, or other property located within or outside this state that is (a) used in connection with the operations of an electric public utility, (b) used and useful during the multiyear rate plan (MYRP) rate year, (c) otherwise eligible to be included in rate base pursuant to G.S. § 62-133(b)(1), and (d) pre-identified as a Capital Spending Project at the time of initial approval of the MYRP by the Commission. A Capital Spending Project includes associated direct costs, net of operating benefits. Capital Spending Project is an entire project, not discrete annual components of an overall project. For purposes of this Rule, a Capital Spending Project must have a total cost of at least \$1,000,000 over the life of the project.
- (2) "Cost causation principle" means establishment of a causal link between a specific customer class, how that class uses the electric system, and costs incurred by the electric public utility for the provision of electric service.
- (3) "Decoupling ratemaking mechanism" means a ratemaking mechanism intended to break the link between an electric public utility's revenue and the level of consumption of electricity on a per customer basis by its residential customers.
- (4) "Distributed energy resource" or "DER" means a device or measure that produces electricity or reduces electricity consumption and is connected to the electric distribution system, either on the customer's premises or on the electric public utility's primary distribution system. For the purposes of G.S. § 62-133.16 and Rule R8-\_\_\_\_, a DER may include any of the following: energy efficiency, distributed generation, demand response, microgrids, energy storage, energy management systems, and electric vehicles.

- (5) "Earnings sharing mechanism" means an annual ratemaking mechanism that shares surplus earnings between the electric public utility and customers over the period of time covered by a MYRP.
- (6) "Electric public utility" means an electric public utility as defined in G.S. § 62-3(23) that is subject to the Commission's jurisdiction.
- (7) "Multiyear rate plan" or "MYRP" means a ratemaking mechanism under which the Commission sets base rates for a multiyear period that includes authorized periodic changes in base rates without the need for the electric public utility to file a subsequent general rate application pursuant to G.S. § 62-133, along with an earnings sharing mechanism.
- (8) "Performance incentive mechanism" or "PIM" means a ratemaking mechanism that links electric public utility revenue or earnings to electric public utility performance in targeted areas consistent with policy goals, as that term is defined by this Rule, approved by the Commission, and includes specific performance metrics and targets against which electric public utility performance is measured.
- (9) "Performance-based regulation" or "PBR" means an alternative ratemaking 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.
- (10) "Policy goal" means the expected or anticipated achievement of operational efficiency, cost-savings, or reliability of electric service that is greater than that which already is required by State or federal law or regulation, including standards the Commission has established by order prior to and independent of a PBR application, provided that, with respect to environmental standards, the Commission may not approve a policy goal that is more stringent than is established by (i) State law, (ii) federal law, (iii) the Environmental Management Commission pursuant to G.S. § 143B-282, or (iv) the United States Environmental Protection Agency.

- (11) "Rate year" means the year of the MYRP for which base rates, as established pursuant to G.S. § 62-133 and revised pursuant to G.S. § 62-133.16, are effective.
- (12) "Tracking metric" means a methodology for tracking and quantitatively measuring and monitoring outcomes or electric public utility performance.

(c) Adoption of Policy Goals for PBR

- (1) By April 1, 2022, and no later than every three years thereafter, interested parties may propose policy goals in a generic docket initiated by the Commission for the purpose of setting policy goals that PIMs proposed in a MYRP may target.
- (2) Each proposed policy goal must be clearly defined, be measurable with a defined performance metric or set of metrics, entail a desired outcome, and be solely or primarily within the electric public utility's control. The proposed policy goal should indicate how it would address operational efficiency, cost-savings, or reliability of electric service beyond that which is already required by State or federal law or regulation, including standards the Commission has established by order prior to and independent of a PBR application.
- (3) Each recommended policy goal shall be accompanied by:
  - a. A clear statement defining and explaining the policy goal;
  - b. an explanation as to why the goal is appropriate;
  - c. suggested metrics for measuring success in achieving the goal;
  - d. a timeline to achieve the policy goal. Any policy goal extending beyond one year must also include incremental annual achievement targets; and
  - e. supporting analyses, workpapers, modeling, and any other information needed to provide reasonable justification for implementing the policy goal.

- (4) Upon a showing of good cause by any party, or upon the Commission's own motion, policy goals may be reviewed at any time.

(d) Technical Conference

- (1) No later than 120 days before an electric public utility gives notice that it intends to file a general rate case that includes a PBR application, the electric public utility shall file a request with the Commission to initiate a technical conference regarding projected transmission and distribution expenditures, pursuant to G.S. § 62-133.16(j)(3).
- (2) Parties seeking to participate in a technical conference shall file a notice with the Commission no later than 15 days before the conference in a manner to be specified by the Commission in a procedural order setting the date(s) and time(s) of the public meeting(s).
- (3) No later than ten business days before the technical conference, the electric public utility shall file copies of its presentations along with all of the following information regarding projected transmission and distribution expenditures:
  - a. A comprehensive list of programs and major projects accompanied by, for each program and project, the purpose, (i.e., capacity increase or reliability), a timeline for construction, cost-benefit analyses, and any other information, justifying each program and project. Cost-benefit analyses shall not be required if a program or project is required by law ;
  - b. An explanation of the need for the proposed transmission and distribution expenditures and how the overall proposal advances system efficiency, reliability, or is necessary to comply with applicable federal operational or design requirements;
  - c. The projected costs of each program and project.
- (4) Subject to the Commission's scheduling order, interested parties will have an opportunity to provide both comment and feedback as specified by the Commission.

(e) PBR Application. – An electric public utility seeking approval of PBR shall file, along with its application for a general rate increase pursuant to G.S. § 62-133 and Commission Rule R1-17, all of the following:

- (1) A proposed decoupling ratemaking mechanism that includes the following:
  - a. The applicable residential rate schedules and riders eligible to be affected by the decoupling.
  - b. The proposed target annual revenue requirement per residential customer unit for each rate year, with weather normalization, along with the utility's underlying assumptions, calculations, and methodology.
  - c. Proposed distribution of the weather normalized per residential revenue requirement for each month in each rate year, along with the utility's underlying assumptions, calculations, and methodology.
  - d. The projected number of residential customers for each rate year, along with the projected number of residential customers for each month of each rate year, or some calculation or methodology for determining the projected number of residential customers for each month.
  - e. The proposed method for calculating and deferring differences realized between the estimated and actual revenue per customer.
  - f. Electric Vehicle (EV) Sales and Rates
    - i. A method for distinguishing kWh sales associated with EVs and the residential class as a whole and an explanation of how those EV sales will be treated.
    - ii. EV rate schedules or riders that have been excluded from the mechanism, along with the projected number of EV customers and kWh for each month of each rate year, along with the utility's underlying assumptions, calculations, and methodology.

- (2) An application for a MYRP that includes the following:



- a. A concise, plain statement of the changes in base rates and the time when the change in rates will go into effect with schedules for each rate year of the MYRP in the same manner required pursuant to G.S. § 62-134(a).
- b. A forecast of the weather normalized revenues and costs for each rate year of the MYRP, (i) with and without the MYRP revenue increases proposed pursuant to this section (e)(2), (ii) adjusted as appropriate to incorporate any decoupling impacts expected pursuant to section (e)(1) of this Rule, and (iii) adjusted to include the incremental effects of all proposed Capital Spending Projects upon the revenues and costs proposed to be approved and resulting from the general base rate increase proposed pursuant to G.S. § 62-133 and Commission Rule R1-17, including effects on revenues from the sale of electricity, operating revenues other than those from the sale of electricity, base fuel expenses, other operation and maintenance expenses, depreciation and amortization expenses, property taxes, taxes other than income taxes, state and federal income taxes, deferred income taxes, and any other operating revenues and operating revenue deductions. All of the information required by this subdivision shall be accompanied by detailed workpapers supporting each of these revenues and costs.
- c. A forecast of the required overall return, return on common equity (or its equivalent), and revenue requirement for each rate year of the MYRP, (i) with and without the MYRP revenue increases proposed pursuant to this section (e)(2), (ii) adjusted as appropriate to incorporate any decoupling impacts expected pursuant to section (e)(1) of this Rule, and (iii) adjusted to include the incremental effects of all proposed Capital Spending Projects upon the original cost rate base proposed to be approved and resulting from the general base rate increase proposed pursuant to G.S. § 62-133 and Commission Rule R1-17, including effects on the required capital structure; cost of long-term debt; required rate of return on common equity (or its equivalent); rate base investment, including but not limited to plant in service (including the allowance for

funds used during construction), construction work in progress proposed to be included in rate base, nuclear fuel inventory, accumulated depreciation, accumulated amortization of nuclear fuel inventory, other fuel inventory, materials and supplies inventory, cash working capital, other working capital, operating reserves, and other debits and credits to rate base (including all regulatory assets and liabilities). All of the information required by this subdivision shall be accompanied by detailed workpapers supporting each of these rate base amounts.

- d. A forecast, for each year of the MYRP, of the kWh sales, kilowatt (kW) load (coincident peak demand, non-coincident peak demand), electric vehicle kWh sales, and the number of expected customers, with weather normalization, all accompanied by detailed workpapers supporting each of these items.
- e. The electric public utility's forecasting methodology used for each of its forecasts, including its forecasts for all costs, energy sales, peak demand, and number of expected customers for each year of the MYRP.
- f. A detailed description of and detailed workpapers supporting all adjustments increasing or decreasing, for each year of the MYRP, operating revenue deductions and capital expenditures above or below the amounts proposed for the general rate case in accordance with G.S. § 62-133.
- g. A detailed description of and detailed workpapers supporting all expected and reasonably estimable increases in operating revenue, or reductions in operating revenue deductions and rate base, expected in each of the annual MYRP rate periods, other than those related to inflation, normal and routine customer growth, and normal and routine operations and maintenance, and (i) an explanation of whether and, if so, why any of these has been excluded from the calculated revenue requirements for each rate period, and (ii) to the extent that any of these have been excluded, how adequate ratepayer protection will be

accomplished. Such reductions shall include, but not be limited to, decreases in net plant in service due to retirements of utility plant; increases in accumulated depreciation due to continued depreciation of test year plant in service; increases or decreases in rate base due to continued amortization of test year deferred debits and credits (including regulatory assets and liabilities); decreases in depreciation expense due to retirement of test year plant in service; and other known and reasonably estimable changes.

- h. A detailed description of and detailed workpapers supporting any operating revenue deductions normalized for ratemaking purposes pursuant to G.S. § 62-133 for which the annual MYRP amounts are proposed to differ from the normalized test year amounts.
- i. Detailed workpapers setting forth the calculations of state and federal current and deferred income tax expense for each year of the MYRP period, with and without the increases proposed pursuant to the MYRP.
- j. A fully adjusted jurisdictional and class cost of service study that includes:
  - i. Total electric cost of service and rates of return on rate base under present rates per books, present rates annualized, and proposed rates for each year of a MYRP annualized;
  - ii. Functionalization and classification of all revenues, rate base, and expenses related to the base year and each subsequent year of a MYRP;
  - iii. A unit cost study for the base year and each subsequent year of a MYRP; and,
  - iv. Jurisdictional and customer class allocation factors and accompanying workpapers.
- k. The electric public utility's financing plan for the Capital Spending Projects for each year of the MYRP.

- I. Projected costs (including the ranges and degrees of precision of the costs) and related workpapers associated with the proposed known and measurable set of Capital Spending Projects for each rate year of the MYRP, including:
  - i. The reason for each Capital Spending Project,
  - ii. The scope of each Capital Spending Project,
  - iii. The timing of each Capital Spending Project,
  - iv. The depreciation life of each Capital Spending Project by year,
  - v. Changes expected in the depreciable life of each Capital Spending Project for two years after the conclusion of the MYRP, and
  - vi. The impacts on (a) operating expenses (including operations and maintenance, depreciation, and taxes other than income expenses), and (b) the itemized rate base, related to the construction, and placement into service, of the Capital Spending Projects, individually and in the aggregate for each rate year of the MYRP.
- m. A detailed statement indicating which projected, incremental capital projects equal to or greater than \$1,000,000 (and associated expenses) are not included in the proposed MYRP as Capital Spending Projects, and why.
- n. Projected operating benefits associated with the Capital Spending Projects to be placed in service during each rate year of the MYRP, including the methodology, modeling, or other analyses used to determine the projected operating benefits.
- o. Projected depreciation of rate base associated with the Capital Spending Projects during each rate year of the MYRP period.
- p. A reconciliation, accompanied by detailed workpapers, of the capital expenditures and expenses associated

with the Capital Spending Projects set forth in response to subsection I above with the increases in annual expenses and capital investments set forth in subsections b and c above.

- q. A proposed earnings sharing mechanism that provides for the refund of any annual revenues collected from the ratepayers associated with weather normalized earnings 50 basis points or more above the Commission authorized rate of return on equity to customers approved pursuant to G.S. § 62-133, pursuant to G.S. § 62-133.16(c)(1)c.1. At a minimum, the application should include the following:
  - i. The projected, weather normalized earnings for each rate year.
  - ii. The electric public utility's weather normalization methodology, along with all underlying assumptions and calculations.
  - iii. Proposed revenue requirements for each rate year of the MYRP.
- r. Base rates for each of the years that a MYRP is in effect or a method for calculating the same, accompanied by exhibits that illustrate base rate changes (exclusive of all riders applicable to the electric public utility's service), and workpapers similar in form to those provided for the general rate case pursuant to G.S. § 62-133, with exhibits including the base revenues and associated rates for the NC retail jurisdiction, each customer class and rate schedule:
  - i. Present base rates and revenues, annualized for the end of the test year period, as calculated pursuant to G.S. § 62-133;
  - ii. Proposed base rates and revenues, annualized for the end of the test year, as calculated pursuant to G.S. § 62-133; and,
  - iii. Proposed base rates and revenues pro forma for each year of the MYRP.

- s. A proposed allocation of the electric public utility's total revenue requirement among customer classes for each rate year of the MYRP based upon the cost causation principle, including the use of minimum system methodology by an electric public utility that allocates distribution costs between customer classes, except for the setting of a basic facilities charge. Interclass subsidization of ratepayers should be minimized to the greatest extent practicable by the conclusion of the MYRP period.
- t. A new depreciation study completed within the prior 180 days.

(3) Testimony and exhibits that include:

- a. An analysis of the impact of the proposed MYRP, that demonstrates that it would, if approved:
  - i. Assure that no customer or class of customers is unreasonably harmed;
  - ii. Assure that the rates are fair both to the electric public utility and to each customer class so that they do not create any undue subsidy of any one customer class by another;
  - iii. Reasonably assure the continuation of safe and reliable electric service;
  - iv. Not unreasonably prejudice any class of electric customers, and;
  - v. Not result in sudden substantial rate increases or "rate shock" to customers.
- b. Discussion and analysis of whether, and if so, how the proposed MYRP addresses each of the objectives listed in G.S. § 62-133.16(d)(2).
- c. Discussion, analysis, and quantification of any increased or decreased risk to either the electric public utility or its ratepayers, including quality of service, revenue requirements, rate impacts experienced by customers,

or credit metrics, which may result from having an approved MYRP.

- (4) One or more clearly defined PIMs that include:
- a. Identification of one or more policy goals adopted by the Commission pursuant to R8-\_\_\_(c) that the PIM targets;
  - b. A detailed explanation of how the proposed PIM supports or advances the policy goal(s);
  - c. An estimate of the impact to annual and total revenue requirements (NC retail jurisdiction and customer classes) that would result from pursuit of the policy goal;
  - d. Identifiable and measurable metrics that will be used to assess compliance, including but not limited to projections of costs to be incurred, along with information on how the electric public utility intends to evaluate, measure, and verify compliance or achievement, and the proposed resources (labor, contractors, materials, etc.) the electric public utility plans to use to implement the policy goal;
  - e. A penalty to be refunded to and a reward to be collected from customers accompanied by one or more of the following:
    - i. An explanation of how any savings achieved by meeting or exceeding a specific policy goal will be shared with customers.
    - ii. A proposal for differentiated authorized rates of return on common equity to encourage utility investments or operational changes to meet a specific policy goal; or
    - iii. Proposed fixed financial rewards or penalties based on achievement of specific policy goals. To the extent possible, the proposed PIMs should reward or penalize the electric public utility for achieving specific outcomes.
    - iv. A detailed explanation of:

- a) how the proposed penalty or reward will minimize any duplication of other rewards or penalties created by other ratemaking mechanisms authorized by statute or Commission rule, and
  - b) how the electric public utility will distinguish the achievements that are rewarded through the incentives earned by the utility related to its DSM/EE portfolio approved pursuant to Rules R8-68 and 8-69 from those that it proposes to be measured for purposes of any performance incentive pursuant to § 62-133.16.
- (5) The electric public utility may include in its PBR application:
  - a. Proposed tracking metrics with or without targets or benchmarks to measure electric public utility achievement.
  - b. A proposed other alternative regulatory mechanism with an explanation in sufficient detail of the proposed mechanism, the nature, scope, and quantity of costs the proposed mechanism would cover, the policy objectives the proposed mechanism would help support or advance, why those policy objectives would not be supported or advanced as effectively by traditional cost of service regulation, a decoupling ratemaking mechanism as defined by G.S. § 62-133.16(a)(2), a MYRP as defined by as defined by G.S. § 62-133.16(a)(5), or PIMs as defined by NG.S. § 62-133.16(a)(6), the duration of the proposed mechanism, how and when cost recovery would occur and be subject to review, and how the proposed mechanism would result in just and reasonable rates, promote the public interest, and be consistent with criteria established in G.S. § 62-133.16 and Rule R8-\_\_\_\_.
- (6) The utility's application shall include a statement acknowledging that any true-up that is associated with any aspect of the PBR application that occurs after the end of an annual MYRP rate period will not constitute retroactive ratemaking.



(f) Procedure Upon the Filing of a General Rate Case That Includes a PBR Application

- (1) The electric public utility shall not make any changes in any rate or implement any component of its PBR application except upon 30 days' notice to the Commission.
- (2) The Commission, on its own motion or at the request of the Commission Staff, Public Staff, or any party of interest in the PBR application proceeding or related general rate case proceeding, shall review the PBR application within 15 days after such filing and notify the applicant by letter of any additional information needed to complete the PBR application under Rule R8-\_\_\_\_. The process for addressing and remedying any deficiencies in the PBR application will be consistent with the process set forth in Rule R1-17(f).
- (3) The Commission will suspend the effect of the proposed base rates and PBR implementation pending investigation in the same manner as provided in G.S. § 62-134(b), but no longer than 300 days;
- (4) The Commission will establish a procedural schedule for intervention and the filing of testimony and discovery guidelines.
- (5) An electric public utility shall provide notice of the pending PBR application to the same extent as provided in G.S. § 62-134(a). The notice shall include the following statement:

Performance Based Regulation

This filing also includes a request for approval of a Performance Based Regulation (PBR) application pursuant to G.S. § 62-133.16 and Commission Rule R8-\_\_\_\_. Specifically, the application includes (1) a Decoupling Ratemaking Mechanism that would allow the Company to refund or collect amounts based on any difference between actual and projected residential customer revenues; (2) a Multiyear Rate Plan, which would allow the Company to collect base rates for a multiyear period no greater than 36 months; (3) an Earnings Sharing Mechanism that would require a refund to customers of surplus earnings over a certain threshold over the multiyear period; and (4) one or more Performance Incentive Mechanisms that would penalize or reward the Company based on its achievement of Commission approved policy goals.

In this PBR application, the Company has requested that the Commission allow it to recover total service revenues of \$\_\_\_\_\_ in year one, \$\_\_\_\_\_ in year two, and \$\_\_\_\_\_ in year three. If the PBR application is approved, the average monthly electric bill for a typical residential customer (based upon monthly electric usage of \_\_\_\_\_ kWh/kW) would be \$\_\_\_\_\_ in year one, \$\_\_\_\_\_ in year two, and \$\_\_\_\_\_ in year three.

- (6) The Commission will, upon reasonable notice, conduct a hearing concerning the lawfulness of the proposed base rates and the PBR application in the same manner as provided in G.S. § 62-134(b).
- (7) The Commission shall consider such relevant, material, and competent evidence as may be offered by any party to the proceeding tending to show actual or estimated changes in costs, revenues, or the cost of the electric public utility's property used and useful expected to be experienced in the MYRP rate years, in providing the service rendered to the public within this State.

(g) Review of Refiled PBR Application

- (1) If the Commission issues a final order rejecting a PBR application and an electric public utility wishes to refile its PBR Application, the electric utility must give notice of its intent to refile no later than 10 days after the Commission's order becomes final, and refile its PBR application within 30 days of such notice.
  - (2) Upon the refiling of a PBR application that has been rejected, the Commission will determine that appropriate schedule to give the utility the opportunity to cure the deficiencies based on their type, number, and complexity, as well as changes in circumstances since the original filing. The Commission-approved, base rates will be in effect for the pendency of the refiling process.
- (h) An electric public utility may not file a general rate case application for rates to be effective during the term of its multiyear rate plan except as permitted by G.S. § 62-133.16(c)(1) and (e).
- (i) Changes to Authorized Capital Spending Projects
- (1) Changes to those Capital Spending Projects authorized by the Commission to be included in a multiyear rate plan, cancelations and postponements of already approved Capital Spending

Projects, substitution of a newly proposed Capital Spending Project for an existing Capital Spending Project, and changes in estimates of cost or date of completion of a Capital Spending Project are subject to the guidelines set out in subsections (i)(2) and (i)(3), and MYRP revenue requirement adjustments provided in subsection (i)(4).

- (2) The following changes to Capital Spending Projects require prior Commission approval:
  - a. cancelation of a Capital Spending Project; and
  - b. substitution of a Capital Spending Project for an approved Capital Spending Project.
- (3) Notification of other changes will be made through the quarterly reports as set out in subsection (k)(3).
- (4) The utility shall review the actual revenue requirements associated with each Capital Spending Project for each MYRP year, based on the actual costs of the Capital Spending Project placed in service during that year, and file such results with the Commission. With regard to the annual MYRP revenue requirements associated with any of the changes considered pursuant to this section (i):
  - a. To the extent that the newly calculated total annual revenue requirement for a Capital Spending Project for any of the three MYRP years, as approved by the Commission, is less than the annual revenue requirement previously approved for that project and that year pursuant to sections (f) and (i) of this Rule, the Commission shall reduce the MYRP portion of base rates effective for any MYRP years affected, and will make appropriate provisions to refund the difference to the affected customers. If a Capital Spending Project is approved for substitution for another, the comparison of revenue requirements for each year shall be between those two projects.
  - b. To the extent that the newly calculated total annual revenue requirement for a Capital Spending Project for any of the three MYRP years, as approved by the Commission, is greater than the annual revenue

requirement previously approved for that project and that year pursuant to sections (f) and (i) of this Rule, no adjustment to the previously approved revenue requirement or MYRP portion of base rates shall be implemented. If a Capital Spending Project is approved for substitution for another, the comparison of revenue requirements for each year shall be between those two projects.

- c. The reduced rates implemented pursuant to subsection (i)(4)a above shall be considered base rates of the utility, and not a temporary rider, and will not be subject to the 50-basis-point band established for earnings sharing by G.S. § 62-133.16(c)(1)c.1.
  - d. The effective date of the change in base rates set pursuant to subsection (i)(4)a above shall be the beginning of each applicable MYRP rate year. The Commission shall establish a regulatory liability or liabilities, as necessary, to provide for refunds to the ratepayers for past periods of the MYRP rate years.
  - e. The determination of any refunds related to earnings sharing shall be made calculated after taking into account the adjustments to revenue requirements and rates approved pursuant to subsection (i)(4)a above.
- (j) Annual Review of PBR Results: Decoupling, MYRP Earnings Sharing, and PIMs
- (1) Decoupling Mechanism: The Commission shall annually evaluate the decoupling rate-making mechanism established as part of the PBR plan, and set rates to refund or collect, as applicable and after Commission review, the balance in the deferred regulatory asset or liability account established pursuant to G.S. § 62-133.16(c)(2) to or from residential customers through billing factors established by the Commission.
    - a. The utility shall file the following with the Commission within 90 days of the end of a MYRP rate year:
      - i. The final applicable residential rate schedules and riders eligible to be affected by the decoupling.

- ii. The finalized proposed target annual revenue requirement per residential customer unit for the preceding rate year, with weather normalization, along with the utility's underlying assumptions, calculations, and methodology.
- iii. The proposed distribution of the weather normalized per residential revenue requirement for each month in the preceding rate year, along with the utility's underlying assumptions, calculations, and methodology.
- iv. The number of residential customers for the preceding rate year, along with the number of residential customers for each month of the preceding rate year, or calculation or methodology for determining the projected number of residential customers for each month. If different from the number of customers identified in section (e)(1) d. above, an explanation of the difference.
- v. The calculation of the total deferred differences between the estimated and actual revenue per customer, and the proposed billing factor(s) to collect or refund the deferred differences, along with detailed supporting workpapers.
- vi. A method for distinguishing kWh sales associated with EVs and the residential class as a whole and an explanation of how those EV sales will be treated; and EV rate schedules or riders that have been excluded from the mechanism, along with the projected number of EV customers and kWh for each month of each rate year, along with the utility's underlying assumptions, calculations, and methodology.

(2) MYRP Earnings Sharing:

- a. The Commission shall annually review an electric public utility's earnings, as affected by weather normalization, decoupling, and any other adjustments to annual earnings found reasonable and appropriate by the Commission, and as adjusted to take into account any

other criteria imposed on the MYRP for that year (including any revenue requirement and rate adjustments approved by the Commission pursuant to subsection (i)(4) of this Rule), to ensure the utility is not earning in excess of its allowable return on equity for reasonable and prudent costs, as adjusted, to provide service. For purposes of measuring an electric public utility's earnings under any mechanisms, plans, or settlements approved under this section, the utility shall make an annual filing that sets forth the utility's earned return on equity for the prior MYRP Rate Year, with appropriate adjustments.

- b. Within 90 days of the end of a MYRP rate year, the utility shall file the following:
  - i. a comparison of the estimated and actual costs and revenues each year of the plan, as well as an explanation of the reasons for the variances;
  - ii. an analysis of the historical accuracy of the utility's short-term, medium-term, and long-term forecasts;
  - iii. The earned return on equity calculated based on the capital structure and cost of debt; preferred stock, and other applicable sources of capital established in the general rate case;
  - iv. A comparison of its actual and pro forma capital investment costs, expenses, revenues, capital structure, and rate of return on equity, as described in and adjusted pursuant to this subsection (2) to those contained in the MYRP as approved by the Commission;
  - v. A list of Capital Spending Projects that were changed and the effect of those changes on the revenue requirement for each Capital Spending Projects;
  - vi. A proposal to adjust rates to stop collecting any costs related to changed Capital Spending Projects and refund to customers any costs already collected before determining earnings sharing effects, unless

such proposal has previously been resolved by the Commission pursuant to subsection (i)(4) of this Rule;

- vii. A statement that the utility's earnings during the subject year of the MYRP, as appropriately adjusted, fell within, exceeded the high-end, or fell below the low-end of the band of authorized returns established by the Commission. If the utility contends that its earnings fell below the low-end of the band of authorized returns established by the Commission, the utility shall also state whether it intends to file a general rate case as allowed by G.S. § 62-133.16;
  - viii. The calculation of the billing factors for any proposed refunds to customers of surplus earnings; and
  - ix. Detailed workpapers and supporting documentation for each of the above items.
- (3) PIMs - Within 90 days of the end of the preceding MYRP rate year, the utility shall file the calculations of all increment and decrement billing factors associated with the PIMS approved by the Commission for the MYRP rate period, and provide all workpapers and supporting documentation verifying and supporting the results of the metrics used to quantify the PIMs' results.
- (4) Overall PBR rate year rider(s) – Within 90 days of the end of the preceding MYRP rate year, the utility shall file the calculation of the combined increment or decrement PBR true-up rider(s) for each rate schedule, consisting of the decoupling, earnings sharing, and PIMs' increment or decrement billing factors, along with any applicable rate adjustments associated with canceled or postponed projects. The calculations shall be accompanied by all applicable detailed workpapers and supporting documentation.
- (5) Audit and Reconciliation. – The MYRP shall be subject to the following:
- a. Upon issuance of a Commission Order scheduling a public hearing on the utility's MYRP and report, the utility shall provide timely notice to customers as required by

the Commission. The public hearing may be subject to cancelation if no significant protests are received.

- b. The Public Staff shall audit the utility's filing and shall make a filing detailing its findings and recommendations no later than six months after the end of each year of the MYRP Period of the utility.
- c. When determining the utility's earned rate of return on equity, the Commission may consider pro forma adjustments to the utility's per books capital expenditures, expenses, revenues, capital structure, and embedded cost rates for long-term debt, preferred stock, or other sources of capital. The Commission may also consider the following: (i) the extent to which refunds of MYRP revenues should be provided for before determination of earnings sharing; (ii) the extent to which additional refunds, deferral accounting, or other steps should be provided for to provide the ratepayers with the benefits of enhancements to earnings during the MYRP rate periods, before determination of earnings sharing.
- d. The Commission shall issue an order addressing its findings and making effective any reconciliation or adjustment to the MYRP it deems appropriate no later than ten months after the end of each year of the MYRP Period. Any reconciliation or adjustment to the MYRP ordered by the Commission, including any refund or credit to customers of excess earnings above the high end of the banding of authorized returns established by the Commission, shall be effective beginning 12 months after the conclusion of the preceding year of the MYRP Period.
- e. The Commission shall issue an order addressing its findings and making effective any reconciliation or adjustment to the MYRP it deems appropriate no later than ten months after the end of each year of the MYRP Period. Any reconciliation or adjustment to the MYRP ordered by the Commission, including any refund or credit to customers of excess earnings above the high end of the banding of authorized returns established by the Commission, shall be effective beginning 12 months



after the conclusion of the preceding year of the MYRP Period.

- f. If the Commission concludes that the utility's earnings fell below the low-end of the band of authorized returns established by the Commission, and the utility provided notice of its intent to file a general rate case pursuant to subsection (j)(2)i of this section, following the current year of the MYRP, rates will continue at the level set for the current MYRP rate year pending the outcome of the next general rate case.
- (6) No actions or recommendations of any intervenor in any MYRP earnings review and audit conducted pursuant to subsections (i)(2) or (i)(5) of this Rule regarding the reasonableness or prudence of revenues, expenses, or items of rate base, nor any conclusion, finding, or ordering language of the Commission regarding such, shall preclude an investigation or Commission action in the utility's next general rate case regarding the reasonableness and prudence of the same items of cost of service.
- (k) Reporting Requirements. – The utility shall make filings addressing each three-month period within the MYRP Period. The first filing shall be made no later than 60 days after the first three-month period, and subsequent reports shall be made every three months thereafter. Each filing shall contain the following:
  - (1) An earnings report consisting of the following:
    - a. A balance sheet as of the report date and an income statement for the three months and MYRP year-to-date for the utility;
    - b. A statement of the per books net operating income for the for the three months and MYRP year-to-date for each rate class of the utility based on the most recent cost of service allocation study filed with the Commission, and on North Carolina ratemaking;
    - c. A statement of rate base at the end of the three months for each rate class of the utility based on the most recent

cost of service allocation study filed with the Commission, and on North Carolina ratemaking;

- d. The number of customers, kWh and kW sold, and service revenue for the three months for each rate division by rate type; and
  - e. A report of refunds or credits disbursed to customers during the three months by rate class by rate schedule.
- (2) A construction status report which includes the following information for each Capital Spending Project:
- a. The costs incurred during the three months;
  - b. The cumulative amount incurred;
  - c. The estimated total cost;
  - d. The completion date estimated in the MYRP; and
  - e. The actual completion date or, if not complete, the current estimated completion date.
- (3) A report tracking the changes to any Capital Spending Project, approved by the Commission for inclusion in a multiyear rate plan. The quarterly report shall include at a minimum, the following items:
- a. List of projects impacted by the change, including the project name as originally approved, any change in the scope of the project, and any other projects (new or original) that are impacted by the change.
  - b. For each project identified in subparagraph (a) above, provide:
    - i. The original and revised forecast completion dates, including any revision to the dates when the project was originally scheduled to be placed in service;
    - ii. A statement explaining the purpose/reason for the change;

- iii. The original and revised cost estimates;
  - iv. The actual spending in each quarter, year-to-date, and project-to-date; and
  - v. The actual costs that have already been recovered through from ratepayers year-to-date and project-to-date.
- (l) Burden of Proof. – The burden of proof as to whether a MYRP mechanism is in the public interest, the correctness and reasonableness of any MYRP, including the planned rate adjustments, Capital Spending Projects, and forecasted expenses, and whether the capital investment and expenses were reasonable and prudently incurred shall be on the utility as provided in N.C.G.S. §§ 62-75 and 62-134.
- (m) Commission Review. – At any time prior to expiration of a PBR plan period, the Commission, with good cause and upon its own motion or petition by the Public Staff, may examine the reasonableness of the electric public utility's rates under the plan, conduct reviews of and hearings on the plan, or initiate a proceeding to adjust base rates or PIMs.
- (n) Rates following Expiration of PBR Ratemaking Mechanisms – Following the expiration of the multiyear plan period, the rates for the current MYRP rate year shall remain in effect until further order of the Commission.
- (o) At least 300 days prior to the expiration of a MYRP, the electric public utility must notify the Commission when it intends to file a new application for a general rate case pursuant to G.S. 62-133 with or without an application for PBR and the requested effective date of new base rates. If the requested effective date of new base rates is after the expiration date of the MYRP, the Commission shall, as provided in G.S. 62-16(e), review the reasonableness of the electric public utility's rates under the MYRP and establish new base rates for the period immediately following expiration of the MYRP.

## Rule R8-\_\_\_\_. PERFORMANCE BASED RATEMAKING.

(a) Purpose. – The purpose of this rule is to establish procedures and guidelines for the implementation of performance-based regulation of electric public utilities consistent with ~~N.C. Gen. Stat~~G.S. § 62-133.16.

(b) Definitions. – As used in this rule:

- (1) "Capital Spending Project" means the acquisition, construction, installation, retrofitting, rebuilding, or ~~either~~any addition to or improvement of any equipment, device, structure, facility, or other property located within or outside this state that is (a) used in connection with the operations of an electric public utility, (b) used and useful during the multiyear rate plan (MYRP) rate year, (c) otherwise eligible to be included in rate base pursuant to G.S. § 62-133(b)(1), and (d) pre-identified as a Capital Spending Project at the time of initial approval of the MYRP by the Commission. A Capital Spending Project ~~does not mean~~includes associated direct costs, net of operating benefits. Capital Spending Project is an entire project, not discrete annual components of an overall project,~~but instead means the entire project~~. For purposes of this Rule, a Capital Spending Project must have a total cost of at least \$1,000,000 over the life of the project.
- (2) "Cost causation principle" means establishment of a causal link between a specific customer class, how that class uses the electric system, and costs incurred by the electric public utility for the provision of electric service.
- (3) "Decoupling ratemaking mechanism" means a ratemaking mechanism intended to break the link between an electric public utility's revenue and the level of consumption of electricity on a per customer basis by its residential customers.
- (4) "Distributed energy resource" or "DER" means a device or measure that produces electricity or reduces electricity consumption and is connected to the electric distribution system, either on the customer's premises or on the electric public utility's primary distribution system. For the purposes of G.S. § 62-133.16 and Rule R8-\_\_\_\_, a DER may include any of the following: energy efficiency, distributed generation, demand response, microgrids,

energy storage, energy management systems, and electric vehicles.

- (5) "Earnings sharing mechanism" means an annual ratemaking mechanism that shares surplus earnings between the electric public utility and customers over the period of time covered by a MYRP.
- (6) "Electric public utility" means an electric public utility as defined in G.S. § 62-3(23) that is subject to the Commission's jurisdiction.
- (7) "Multiyear rate plan" or "MYRP" means a ratemaking mechanism under which the Commission sets base rates for a multiyear period that includes authorized periodic changes in base rates without the need for the electric public utility to file a subsequent general rate application pursuant to G.S. § 62-133, along with an earnings sharing mechanism.
- (8) "Performance incentive mechanism" or "PIM" means a ratemaking mechanism that links electric public utility revenue or earnings to electric public utility performance in targeted areas consistent with policy goals, as that term is defined by this Rule, approved by the Commission, and includes specific performance metrics and targets against which electric public utility performance is measured.
- (9) "Performance-based regulation" or "PBR" means an alternative ratemaking 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.
- (10) "Policy goal" means the expected or anticipated achievement of operational efficiency, cost-savings, or reliability of electric service that is greater than that which already is required by State or federal law or regulation, including standards the Commission has established by order prior to and independent of a PBR application, provided that, with respect to environmental standards, the Commission may not approve a policy goal that is more stringent than is established by (i) State law, (ii) federal law, (iii) the Environmental Management Commission pursuant to

G.S. § 143B-282, or (iv) the United States Environmental Protection Agency.

- (11) "Rate year" means the year of the MYRP for which base rates, as established pursuant to G.S. § 62-133 and revised pursuant to G.S. § 62-133.16, are effective.
- (12) "Tracking metric" means a methodology for tracking and quantitatively measuring and monitoring outcomes or electric public utility performance.

(c) Adoption of Policy Goals for PBR

- (1) By April 1, 2022, and no later than every three years thereafter, interested parties may propose policy goals in a generic docket initiated by the Commission for the purpose of setting policy goals that PIMs proposed in a MYRP may target.
- (2) Each proposed policy goal must be clearly defined, be measurable with a defined performance metric or set of metrics, entail a desired outcome, and be solely or primarily within the electric public utility's control. The proposed policy goal should indicate how it would address operational efficiency, cost-savings, or reliability of electric service beyond that which is already required by State or federal law or regulation, including standards the Commission has established by order prior to and independent of a PBR application.
- (3) Each recommended policy goal shall be accompanied by:
  - a. A clear statement defining and explaining the policy goal ;
  - b. an explanation as to why the goal is appropriate;
  - c. suggested metrics for- measuring success in achieving the goal;
  - d. a timeline to achieve the policy goal. Any policy goal extending beyond one year must also include incremental annual achievement targets; and

- e. supporting analyses, workpapers, modeling, and any other information needed to provide reasonable justification for implementing the policy goal.
- (4) Upon a showing of good cause by any party, or upon the Commission's own motion, policy goals may be reviewed at any time.

(d) Technical Conference

- (1) No later than ~~90~~120 days before an electric public utility gives notice that it intends to file a general rate case that includes a PBR application, the electric public utility shall file a request with the Commission to initiate a technical conference regarding projected transmission and distribution expenditures, pursuant to G.S. § 62-133.16(j)(3).
- (2) Parties seeking to participate in a technical conference shall file a notice with the Commission no later than ~~five~~15 days before the conference in a manner to be specified by the Commission in a procedural order setting the date(s) and time(s) of the public meeting(s).
- (3) ~~At~~No later than ten business days before the ~~public meeting(s), technical conference,~~ the electric public utility shall ~~present~~file copies of its presentations along with all of the following information regarding projected transmission and distribution expenditures:
  - a. A comprehensive list of programs and major projects accompanied by, for each program and project, the purpose-, (i.e., capacity increase or reliability), a timeline for construction-, ~~cost-benefit analyses;~~ and any other information-, justifying each program and project. Cost-benefit analyses shall not be required if a program or project is required by law ;
  - b. An explanation of the need for the proposed transmission and distribution expenditures and how the overall proposal advances system efficiency, reliability, or is necessary to comply with applicable federal operational or design requirements; ~~and~~
  - c. The projected costs of each program and project.

- (4) Subject to the Commission's scheduling order, interested parties will have an opportunity to provide both comment and feedback as specified by the Commission.

~~(e)~~ PBR Application. – An electric public utility seeking approval of PBR:

~~(e)~~ ~~Shall~~ shall file, along with its application for a general rate increase pursuant to G.S. § 62-133 and Commission Rule R1-17, all of the following:

- (1) A proposed decoupling ratemaking mechanism that includes the following:
  - a. The applicable residential rate schedules and riders eligible to be affected by the decoupling.
  - b. The proposed target annual revenue requirement per residential customer unit for each rate year, with weather normalization, along with the utility's underlying assumptions, calculations, and methodology.
  - c. Proposed distribution of the weather normalized per residential revenue requirement for each month in each rate year, along with the utility's underlying assumptions, calculations, and methodology.
  - d. The projected number of residential customers for each rate year, along with the projected number of residential customers for each month of each rate year, or some calculation or methodology for determining the projected number of residential customers for each month.
  - e. The proposed method for calculating and deferring differences realized between the estimated and actual revenue per customer.
  - f. Electric Vehicle (EV) Sales and Rates
    - i. A method for distinguishing kWh sales associated with EVs and the residential class as a whole and an explanation of how those EV sales will be treated.
    - ii. EV rate schedules or riders that have been excluded from the mechanism, along with the projected number of EV customers and kWh for each month of each rate



year, along with the utility's underlying assumptions, calculations, and methodology.

- (2) ~~Shall file, along with its application for a general rate increase pursuant to G.S. § 62-133 and Commission Rule R1-17, an~~An application for a MYRP that includes the following:
- a. A concise, plain statement of the changes in base rates and the time when the change in rates will go into effect with schedules for each rate year of the MYRP in the same manner required pursuant to G.S. § 62-134(a).
  - b. A forecast of the weather normalized revenues and costs for each rate year of the MYRP, including(i) with and without the MYRP revenue increases proposed pursuant to this section (e)(2), (ii) adjusted as appropriate to incorporate any decoupling impacts expected pursuant to section (e)(1) of this Rule, and (iii) adjusted to include the incremental effects of all proposed Capital Spending Projects upon the revenues and costs proposed to be approved and resulting from the general base rate increase proposed pursuant to G.S. § 62-133 and Commission Rule R1-17, including effects on revenues from the sale of electricity, operating revenues other than those from the sale of electricity, base fuel expenses, other operation and maintenance expenses, depreciation and amortization expenses, property taxes, taxes other than income taxes, state and federal income taxes, deferred income taxes, and any other operating revenues and operating revenue deductions, ~~all.~~ All of the information required by this subdivision shall be accompanied by detailed workpapers supporting each of these revenues and costs.
  - c. A forecast of the required overall return, return on common equity (or its equivalent), and revenue requirement for each rate year of the MYRP, including(i) with and without the MYRP revenue increases proposed pursuant to this section (e)(2), (ii) adjusted as appropriate to incorporate any decoupling impacts expected pursuant to section (e)(1) of this Rule, and (iii) adjusted to include the incremental effects of all proposed Capital Spending Projects upon the original

cost rate base proposed to be approved and resulting from the general base rate increase proposed pursuant to G.S. § 62-133 and Commission Rule R1-17, including effects on the required capital structure; cost of long-term debt; required rate of return on common equity (or its equivalent); rate base investment, including but not limited to plant in service (including the allowance for funds used during construction), construction work in progress proposed to be included in rate base, nuclear fuel inventory, accumulated depreciation, accumulated amortization of nuclear fuel inventory, other fuel inventory, materials and supplies inventory, cash working capital, other working capital, operating reserves, and other debits and credits to rate base (including all regulatory assets and liabilities); ~~all~~). All of the information required by this subdivision shall be accompanied by detailed workpapers supporting each of these ~~items~~ rate base amounts.

- d. A forecast, for each year of the MYRP, of the kWh sales, kilowatt (kW) load (coincident peak demand, non-coincident peak demand), electric vehicle kWh sales, and the number of expected customers, with weather normalization, all accompanied by detailed workpapers supporting each of these items.
- e. The electric public utility's forecasting methodology used for each of its forecasts, including its forecasts for all costs, energy sales, peak demand, and number of expected customers for each year of the MYRP.
- f. A detailed description of and detailed workpapers supporting all adjustments increasing or decreasing, for each year of the MYRP, operating revenue deductions and capital expenditures above or below the amounts proposed for the general rate case in accordance with G.S. § 62-133.
- g. A detailed description of and detailed workpapers supporting all expected and reasonably estimable increases in operating revenue, or reductions in operating revenue deductions and rate base, expected in each of the annual MYRP rate periods, ~~and~~ other than

those related to inflation, normal and routine customer growth, and normal and routine operations and maintenance, and (i) an explanation of whether and, if so, why any of these has been excluded from the calculated revenue requirements for each rate period, and (ii) to the extent that any of these have been excluded, how adequate ratepayer protection will be accomplished. Such reductions shall include, but not be limited to, decreases in net plant in service due to retirements of utility plant; increases in accumulated depreciation due to continued depreciation of test year plant in service; increases or decreases in rate base due to continued amortization of test year deferred debits and credits (including regulatory assets and liabilities); decreases in depreciation expense due to retirement of test year plant in service; and other known and reasonably estimable changes.

- h. A detailed description of and detailed workpapers supporting any operating revenue deductions normalized for ratemaking purposes pursuant to G.S. § 62-133 for which the annual MYRP amounts are proposed to differ from the normalized test year amounts.
- i. Detailed workpapers setting forth the calculations of state and federal current and deferred income tax expense for each year of the MYRP period, with and without the increases proposed pursuant to the MYRP.
- j. A fully adjusted jurisdictional and class cost of service study that includes:
  - i. Total electric cost of service and rates of return on rate base under present rates per books, present rates annualized, and proposed rates for each year of a MYRP annualized;
  - ii. Functionalization and classification of all revenues, rate base, and expenses related to the base year and each subsequent year of a MYRP;

- iii. A unit cost study for the base year and each subsequent year of a MYRP; and,
- iv. Jurisdictional and customer class allocation factors and accompanying workpapers.
- k. The electric public utility's financing plan for the Capital Spending Projects for each year of the MYRP.
- l. Projected costs (including the ranges and degrees of precision of the costs) and related workpapers associated with the proposed known and measurable set of Capital Spending Projects for each rate year of the MYRP, including:
  - i. The reason for each Capital Spending Project,
  - ii. The scope of each Capital Spending Project,
  - iii. The timing of each Capital Spending Project,
  - iv. The depreciation life of each Capital Spending Project by year,
  - v. Changes expected in the depreciable life of each Capital Spending Project for two years after the conclusion of the MYRP, and
  - vi. The impacts on (a) operating expenses (including operations and maintenance, depreciation, and taxes other than income expenses), and (b) the itemized rate base, related to the construction, and placement into service, of the Capital Spending Projects, individually and in the aggregate for each rate year of the MYRP.
- m. A detailed statement indicating which projected, incremental ~~Capital Spending Projects~~ capital projects equal to or greater than \$1,000,000 (and associated expenses) are not included in the proposed MYRP as Capital Spending Projects, and why.
- n. Projected operating benefits associated with the Capital Spending Projects to be placed in service during each rate year of the MYRP, including the methodology,

modeling, or other analyses used to determine the projected operating benefits.

- o. Projected depreciation of rate base associated with the Capital Spending Projects during each rate year of the MYRP period.
- p. A reconciliation, accompanied by detailed workpapers, of the capital expenditures and expenses associated with the Capital Spending Projects set forth in response to subsection l above with the increases in annual expenses and capital investments set forth in subsections b and c above.
- q. A proposed earnings sharing mechanism that provides for the refund of any annual revenues collected from the ratepayers associated with weather normalized earnings 50 basis points or more above the Commission authorized rate of return on equity to customers approved pursuant to G.S. § 62-133, pursuant to G.S. § 62-133.16(c)(1)c.1. At a minimum, the application should include the following:
  - i. The projected, weather normalized earnings for each rate year.
  - ii. The electric public utility's weather normalization methodology, along with all underlying assumptions and calculations.
  - iii. Proposed revenue requirements for each rate year of the MYRP.
- r. Base rates for each of the years that a MYRP is in effect or a method for calculating the same, accompanied by exhibits that illustrate base rate changes (exclusive of all riders applicable to the electric public utility's service), and workpapers similar in form to those provided for the general rate case pursuant to G.S. § 62-133, with exhibits including the base revenues and associated rates for the NC retail jurisdiction, each customer class and rate schedule:

- i. Present base rates and revenues, annualized for the end of the test year period, as calculated pursuant to G.S. § 62-133;
    - ii. Proposed base rates and revenues, annualized for the end of the test year, as calculated pursuant to G.S. § 62-133; and,
    - iii. Proposed base rates and revenues pro forma for each year of the MYRP.
  - s. A proposed allocation of the electric public utility's total revenue requirement among customer classes for each rate year of the MYRP based upon the cost causation principle, including the use of minimum system methodology by an electric public utility that allocates distribution costs between customer classes, except for the setting of a basic facilities charge. Interclass subsidization of ratepayers should be minimized to the greatest extent practicable by the conclusion of the MYRP period.
  - t. ~~Shall file, as part of its PBR Application, testimony~~ A new depreciation study completed within the prior 180 days.
- (3) Testimony and exhibits that include:
- a. An analysis of the impact of the proposed MYRP, that demonstrates that it would, if approved:
    - i. Assure that no customer or class of customers is unreasonably harmed;
    - ii. Assure that the rates are fair both to the electric public utility and to each customer class so that they do not create any undue subsidy of any one customer class by another;
    - iii. Reasonably assure the continuation of safe and reliable electric service;
    - iv. Not unreasonably prejudice any class of electric customers, and;

- v. Not result in sudden substantial rate increases or "rate shock" to customers.
  - b. Discussion and analysis of whether, and if so, how the proposed MYRP addresses anyeach of the objectives listed in G.S. § 62-133.16(d)(2).
  - c. Discussion, analysis, and quantification of any increased or decreased risk to either the electric public utility or its ratepayers, including quality of service, revenue requirements, rate impacts experienced by customers, or credit metrics, which may result from having an approved MYRP.
  - ~~d. A process for adjusting rates to be charged during the MYRP period, and refunding revenues for estimated costs if already collected, for the costs of any planned investment if not completed or canceled, or if it became prudent to delay or avoid making the investment.~~
- (4) One or more clearly defined PIMs that include:
- a. Identification of one or more policy goals adopted by the Commission pursuant to R8-\_\_\_(c)(2) or (3) that the PIM targets;
  - b. A detailed explanation of how the proposed PIM supports or advances the policy goal(s);
  - c. An estimate of the impact to annual and total revenue requirements (NC retail jurisdiction and customer classes) that would result from implementationpursuit of the policy goal;
  - d. Identifiable and measurable metrics that will be used to assess compliance, including but not limited to projections of costs to be incurred, along with information on how the electric public utility intends to evaluate, measure, and verify compliance or achievement, and the proposed resources (labor, contractors, materials, etc.) the electric public utility plans to use to implement the policy goal;

- e. A penalty to be refunded to and a reward to be collected from customers accompanied by one or more of the following:
  - i. An explanation of how any savings achieved by meeting or exceeding a specific policy goal will be shared with customers.
  - ii. A proposal for differentiated authorized rates of return on common equity to encourage utility investments or operational changes to meet a specific policy goal; or
  - iii. Proposed fixed financial rewards or penalties based on achievement of specific policy goals. To the extent possible, the proposed PIMs should reward or penalize the electric public utility for achieving specific outcomes.
  - iv. A detailed explanation of:
    - a) how the proposed penalty or reward will minimize any duplication of other rewards or penalties created by other ratemaking mechanisms authorized by statute or Commission rule, and
    - b) how the electric public utility will distinguish the achievements that are rewarded through the incentives earned by the utility related to its DSM/EE portfolio approved pursuant to Rules R8-68 and 8-69 from those that it proposes to be measured for purposes of any performance incentive pursuant to § 62-133.16.

(5) The electric public utility may include in its PBR application:

- a. Proposed tracking metrics with or without targets or benchmarks to measure electric public utility achievement.
- b. A proposed other alternative regulatory mechanism with an explanation in sufficient detail of the proposed mechanism, the nature, scope, and quantity of costs the



proposed mechanism would cover, the policy objectives the proposed mechanism would help support or advance, why those policy objectives would not be supported or advanced as effectively by traditional cost of service regulation, a decoupling ratemaking mechanism as defined by G.S. § 62-133.16(a)(2), a MYRP as defined by as defined by G.S. § 62-133.16(a)(5), or PIMs as defined by NG.S. § 62-133.16(a)(6), the duration of the proposed mechanism, how and when cost recovery would occur and be subject to review, and how the proposed mechanism would result in just and reasonable rates, promote the public interest, and be consistent with criteria established in G.S. § 62-133.16 and Rule R8-\_\_\_\_.

- (6) The utility's application shall include a statement acknowledging that any true-up that is associated with any aspect of the PBR application that occurs after the end of an annual MYRP rate period will not constitute retroactive ratemaking.
- (f) Procedure Upon the Filing of a General Rate Case That Includes a PBR Application
- (1) The electric public utility shall not make any changes in any rate or implement any component of its PBR application except upon 30 days' notice to the Commission.
  - (2) The Commission, on its own motion or at the request of the Commission Staff, Public Staff, or any party of interest in the PBR application proceeding or related general rate case proceeding, shall review the PBR application within 15 days after such filing and notify the applicant by letter of any additional information needed to complete the PBR application under Rule R8-\_\_\_\_. The process for addressing and remedying any deficiencies in the PBR application will be consistent with the process set forth in Rule R1-17(f).
  - (3) The Commission will suspend the effect of the proposed base rates and PBR implementation pending investigation in the same manner as provided in G.S. § 62-134(b), but no longer than 300 days:

~~(2)(4)~~ The Commission will establish a procedural schedule for intervention and the filing of testimony and discovery guidelines.

~~(3)(5)~~ An electric public utility shall provide notice of the pending PBR application to the same extent as provided in G.S. § 62-134(a). The notice shall include the following statement:

#### Performance Based Regulation

This filing also includes a request for approval of a Performance Based Regulation (PBR) application pursuant to G.S. § 62-133.16 and Commission Rule R8-\_\_\_\_. Specifically, the application includes (1) a Decoupling Ratemaking Mechanism that would allow the Company to refund or collect amounts based on any difference between actual and projected residential customer revenues; (2) a Multiyear Rate Plan, which would allow the Company to collect base rates for a multiyear period no greater than 36 months; ~~(23)~~ an Earnings Sharing Mechanism that would require a refund to customers of surplus earnings over a certain threshold over the multiyear period; ~~(3) a Decoupling Ratemaking Mechanism that would allow the Company to refund or collect amounts based on any difference between actual and projected residential customer revenues;~~ and (4) one or more Performance Incentive Mechanisms that would penalize or reward the Company based on its achievement of Commission approved policy goals. ~~[if the PBR application contains other alternative regulatory mechanisms, the notice must include a short, plain statement explaining those proposed mechanism(s)].~~

In this PBR application, the Company has requested that the Commission allow it to recover total service revenues of \$\_\_\_\_\_ in year one, \$\_\_\_\_\_ in year two, and \$\_\_\_\_\_ in year three. If the PBR application is approved, the average monthly electric bill for a typical residential customer (based upon monthly electric usage of \_\_\_\_\_ kWh/kW) would be \$\_\_\_\_\_ in year one, \$\_\_\_\_\_ in year two, and \$\_\_\_\_\_ in year three.

~~(4)(1) The Commission will suspend the effect of the proposed base rates and PBR implementation pending investigation in the same manner as provided in G.S. § 62-134(b), but no longer than 300 days;~~

~~(5)(6)~~ The Commission will, upon reasonable notice, conduct a hearing concerning the lawfulness of the proposed base rates and the PBR application in the same manner as provided in G.S. § 62-134(b).

~~(6)(7)~~ The Commission shall consider such relevant, material, and competent evidence as may be offered by any party to the proceeding tending to show actual or estimated changes in costs, revenues, or the cost of the electric public utility's property used and useful expected to be experienced in the MYRP rate years, in providing the service rendered to the public within this State, ~~including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is closed.~~

~~(7) The burden of proof as to whether the PBR application would result in just and reasonable rates, is in the public interest, and is consistent with the criteria established in G.S. 62-133.16 and Commission Rule R8 shall be on the electric public utility.~~

(g) Review of Refiled PBR Application

(1) If the Commission issues a final order rejecting a PBR application and an electric public utility wishes to refile its PBR Application, the electric utility must give notice of its intent to refile no later than 10 days after the Commission's order becomes final, and refile its PBR application within 30 days of such notice.

(2) Upon the refiling of a PBR application that has been rejected ~~by~~, the Commission, will determine that appropriate schedule to give the same requirements, timelines, and procedures as set out for utility the filing of a general rate case that includes a PBR Application will apply; however, opportunity to cure the deficiencies based on ~~the~~their type, number, and complexity ~~of the deficiencies addressed in the refiled application~~, as well as changes in circumstances since the original filing, ~~the Commission may abbreviate the schedule as appropriate.~~ The Commission-approved, base rates will be in effect for the pendency of the refiling process.

(h) An electric public utility may not file a general rate case application for rates to be effective during the term of its multiyear rate plan except as permitted by G.S. § 62-133.16(c)(1) and (e).

(i) Cancellation or Postponement of Changes to Authorized Capital Spending Projects; No Substitution

~~(1) If a Capital Spending Project included in a multiyear rate plan is canceled or postponed, within 30 days of its cancellation or~~

~~postponement, the electric public utility must inform the Commission and file a proposal to adjust rates to reflect the canceled or postponed Capital Spending Project and to refund costs already collected, along with any proposed rate changes for future years in the MYRP rate period.~~

- ~~(2) If the electric public utility makes some other material change to a Capital Spending Project, it must file a status report within 30 days of the known change, including the reason for the change, any changes to the projected costs, scope, or timing of the project.~~
- ~~(3) The electric public utility shall not substitute one or more Capital Spending Projects for an already Commission-approved Capital Spending Project without Commission approval.~~
- (1) Changes to those Capital Spending Projects authorized by the Commission to be included in a multiyear rate plan, cancellations and postponements of already approved Capital Spending Projects, substitution of a newly proposed Capital Spending Project for an existing Capital Spending Project, and changes in estimates of cost or date of completion of a Capital Spending Project are subject to the guidelines set out in subsections (i)(2) and (i)(3), and MYRP revenue requirement adjustments provided in subsection (i)(4).
- (2) The following changes to Capital Spending Projects require prior Commission approval:
  - a. cancelation of a Capital Spending Project; and
  - b. substitution of a Capital Spending Project for an approved Capital Spending Project.
- (3) Notification of other changes will be made through the quarterly reports as set out in subsection (k)(3).
- (4) The utility shall review the actual revenue requirements associated with each Capital Spending Project for each MYRP year, based on the actual costs of the Capital Spending Project placed in service during that year, and file such results with the Commission. With regard to the annual MYRP revenue requirements associated with any of the changes considered pursuant to this section (i):

- a. To the extent that the newly calculated total annual revenue requirement for a Capital Spending Project for any of the three MYRP years, as approved by the Commission, is less than the annual revenue requirement previously approved for that project and that year pursuant to sections (f) and (i) of this Rule, the Commission shall reduce the MYRP portion of base rates effective for any MYRP years affected, and will make appropriate provisions to refund the difference to the affected customers. If a Capital Spending Project is approved for substitution for another, the comparison of revenue requirements for each year shall be between those two projects.
- b. To the extent that the newly calculated total annual revenue requirement for a Capital Spending Project for any of the three MYRP years, as approved by the Commission, is greater than the annual revenue requirement previously approved for that project and that year pursuant to sections (f) and (i) of this Rule, no adjustment to the previously approved revenue requirement or MYRP portion of base rates shall be implemented. If a Capital Spending Project is approved for substitution for another, the comparison of revenue requirements for each year shall be between those two projects.
- c. The reduced rates implemented pursuant to subsection (i)(4)a above shall be considered base rates of the utility, and not a temporary rider, and will not be subject to the 50-basis-point band established for earnings sharing by G.S. § 62-133.16(c)(1)c.1.
- d. The effective date of the change in base rates set pursuant to subsection (i)(4)a above shall be the beginning of each applicable MYRP rate year. The Commission shall establish a regulatory liability or liabilities, as necessary, to provide for refunds to the ratepayers for past periods of the MYRP rate years.
- e. The determination of any refunds related to earnings sharing shall be made calculated after taking into

account the adjustments to revenue requirements and rates approved pursuant to subsection (i)(4)a above.

(j) Annual Review of PBR Results: Decoupling, MYRP Earnings Sharing, and PIMSPIMs

(1) Decoupling Mechanism: The Commission shall annually evaluate the decoupling rate-making mechanism established as part of the PBR plan, and set rates to refund or collect, as applicable and after Commission review, the balance in the deferred regulatory asset or liability account established pursuant to G.S. § 62-133.16(c)(2) to or from residential customers through billing factors established by the Commission.

a. The utility shall file the following with the Commission, ~~for~~ within 90 days of the ~~preceding~~end of a MYRP rate year:

i. The final applicable residential rate schedules and riders eligible to be affected by the decoupling.

ii. The finalized proposed target annual revenue requirement per residential customer unit for the preceding rate year, with weather normalization, along with the utility's underlying assumptions, calculations, and methodology.

iii. The proposed distribution of the weather normalized per residential revenue requirement for each month in the preceding rate year, along with the utility's underlying assumptions, calculations, and methodology.

iv. The number of residential customers for the preceding rate year, along with the number of residential customers for each month of the preceding rate year, or calculation or methodology for determining the projected number of residential customers for each month. If different from the number of customers identified in section (e)(1) d. above, an explanation of the difference.

v. The calculation of the total deferred differences between the estimated and actual revenue per customer, and the proposed billing factor(s) to collect

or refund the deferred differences, along with detailed supporting workpapers.

- vi. A method for distinguishing kWh sales associated with EVs and the residential class as a whole and an explanation of how those EV sales will be treated; and EV rate schedules or riders that have been excluded from the mechanism, along with the projected number of EV customers and kWh for each month of each rate year, along with the utility's underlying assumptions, calculations, and methodology.

(2) MYRP Earnings Sharing:

- a. The Commission shall annually review an electric public utility's earnings, as affected by weather normalization, decoupling, and any other adjustments to annual earnings found reasonable and appropriate by the Commission, and as adjusted to take into account ~~the~~any other criteria imposed on the MYRP for that year, (including any revenue requirement and rate adjustments approved by the Commission pursuant to subsection (i)(4) of this Rule), to ensure the utility is not earning in excess of its allowable return on equity for reasonable and prudent costs, as adjusted, to provide service. For purposes of measuring an electric public utility's earnings under any mechanisms, plans, or settlements approved under this section, the utility shall make an annual filing that sets forth the utility's earned return on equity for the prior MYRP Rate Year, with appropriate adjustments.

b. Within 90 days of the end of a MYRP rate year, the utility shall file the following:

~~b.i.~~ i. a comparison of the estimated and actual costs and revenues each year of the plan, as well as an explanation of the reasons for the variances;

~~c.ii.~~ ii. ~~The utility shall also file~~ an analysis of the historical accuracy of the utility's short-term, medium-term, and long-term forecasts;



~~d. The utility shall file the actual information for the MYRP period corresponding to the estimated or forecasted amounts provided for the estimated period pursuant to section (e)(2) of this Rule.~~

~~e.iii. For purposes of determining whether and to what extent an electric public utility's actual or pro forma earned return on equity falls below the low-end range or exceeds the high-end range of the authorized return band that is approved by the Commission, the only capital cost and expense increases considered, unless the Commission explicitly allows otherwise, shall be the reasonable and prudently incurred capital costs and expenses associated with Capital Spending Projects. The earned return on equity shall be calculated based on the capital structure and cost of debt, preferred stock, and other applicable sources of capital established in the general rate case.~~

~~f.iv. A comparison of its actual and pro forma capital investment costs, expenses, revenues, capital structure, and rate of return on equity, as described in Subsections (b) and (e) above, adjusted pursuant to this subsection (2) to those contained in the MYRP as approved by the Commission.~~

~~g.v. A list of Capital Spending Projects that were canceled or postponed changed and the effect of those changes on the revenue requirement for each Capital Spending Projects;~~

~~h.vi. A proposal to adjust rates to stop collecting any costs related to canceled or postponed changed Capital Spending Projects and refund to customers any costs already collected before determining earnings sharing effects, unless such proposal has previously been resolved by the Commission pursuant to subsection (i)(4) of this Rule;~~

~~i.vii. A statement that the utility's earnings during the subject year of the MYRP, as appropriately adjusted,~~



fell within, exceeded the high-end, or fell below the low-end of the band of authorized returns established by the Commission. If the utility contends that its earnings fell below the low-end of the band of authorized returns established by the Commission, the utility shall also state whether it intends to file a general rate case as allowed by G.S. § 62-133.16~~;~~<sup>i</sup>

~~j.viii.~~ j.viii. The calculation of the billing factors for any proposed refunds to customers of surplus earnings~~;~~ and

~~k.ix.~~ k.ix. Detailed workpapers and supporting documentation for each of the above items.

- (3) ~~PIMs – The~~ PIMs - Within 90 days of the end of the preceding MYRP rate year, the utility shall file the calculations of all increment and decrement billing factors associated with the PIMS approved by the Commission for the MYRP rate period, and provide all workpapers and supporting documentation verifying and supporting the results of the metrics used to quantify the PIMs' results.
- (4) Overall PBR rate year rider(s) – ~~The~~ Within 90 days of the end of the preceding MYRP rate year, the utility shall file the calculation of the combined increment or decrement PBR true-up rider(s) for each rate schedule, consisting of the decoupling, earnings sharing, and PIMs' increment or decrement billing factors, along with any applicable rate adjustments associated with canceled or postponed projects. The calculations shall be accompanied by all applicable detailed workpapers and supporting documentation.
- (5) Audit and Reconciliation. – The MYRP shall be subject to the following:
  - a. Upon issuance of a Commission Order scheduling a public hearing on the utility's MYRP and report, the utility shall provide timely notice to customers as required by the Commission. The public hearing may be subject to cancelation if no significant protests are received.
  - b. The Public Staff shall audit the utility's filing and shall make a filing detailing its findings and recommendations

no later than six months after the end of each year of the MYRP Period of the utility.

- c. When determining the utility's earned rate of return on equity, the Commission may consider pro forma adjustments to the utility's per books capital expenditures, expenses, revenues, capital structure, and embedded cost rates for long-term debt, preferred stock, or other sources of capital. The Commission may also consider the following: (i) the extent to which refunds of MYRP revenues should be provided for before determination of earnings sharing; (ii) the extent to which additional refunds, deferral accounting, or other steps should be provided for to provide the ratepayers with the benefits of enhancements to earnings during the MYRP rate periods, before determination of earnings sharing.
- d. The Commission shall issue an order addressing its findings and making effective any reconciliation or adjustment to the MYRP it deems appropriate no later than ten months after the end of each year of the MYRP Period. Any reconciliation or adjustment to the MYRP ordered by the Commission, including any refund or credit to customers of excess earnings above the high end of the banding of authorized returns established by the Commission, shall be effective beginning 12 months after the conclusion of the preceding year of the MYRP Period.
- e. The Commission shall issue an order addressing its findings and making effective any reconciliation or adjustment to the MYRP it deems appropriate no later than ten months after the end of each year of the MYRP Period. Any reconciliation or adjustment to the MYRP ordered by the Commission, including any refund or credit to customers of excess earnings above the high end of the banding of authorized returns established by the Commission, shall be effective beginning 12 months after the conclusion of the preceding year of the MYRP Period.
- f. If the Commission concludes that the utility's earnings fell below the low-end of the band of authorized returns

established by the Commission, and the utility provided notice of its intent to file a general rate case pursuant to subsection (j)(2)i of this section, following the current year of the MYRP, rates will continue at the level set for the current MYRP rate year pending the outcome of the next general rate case.

(6) No actions or recommendations of any intervenor in any MYRP earnings review and audit conducted pursuant to subsections (i)(2) or (i)(5) of this Rule regarding the reasonableness or prudence of revenues, expenses, or items of rate base, nor any conclusion, finding, or ordering language of the Commission regarding such, shall preclude an investigation or Commission action in the utility's next general rate case regarding the reasonableness and prudence of the same items of cost of service.

(k) Reporting Requirements. – The utility shall make filings addressing each three-month period within the MYRP Period. The first filing shall be made no later than 4560 days after the first three-month period, and subsequent reports shall be made every three months thereafter. Each filing shall contain the following:

(1) An earnings report consisting of the following:

- a. A balance sheet ~~and as of the report date and an~~ income statement for the three months and ~~twelve months~~ MYRP year-to-date for the utility;
- ~~b.~~ A statement of the per books net operating income for the for the three months and ~~twelve months~~ MYRP year-to-date for each rate division of the utility based on North Carolina ratemaking;
- ~~c.~~ A statement of rate base at the end of the three months ~~for each rate division of the utility based on North Carolina ratemaking~~;
- ~~d.~~ The number of customers, kWh sold, and service revenue for the three months ~~for each rate division by rate type~~;

~~e. A balance sheet and income statement for the three months and twelve months to date for the utility;~~

~~f.b.~~ A statement of the per books net operating income for the three months and twelve months to date for each rate class of the utility based on the most recent cost of service allocation study filed with the Commission, and on North Carolina ratemaking;

~~g.c.~~ A statement of rate base at the end of the three months for each rate class of the utility based on the most recent cost of service allocation study filed with the Commission, and on North Carolina ratemaking;

~~h.d.~~ The number of customers, kWh and kW ~~salessold~~, and service revenue for the three months for each rate ~~class~~division by rate ~~schedule; type; and~~

~~i.e.~~ A report of refunds or credits disbursed to customers during the three months by rate class by rate schedule; ~~and.~~

~~j.~~ (2) A construction status report which includes ~~by rate class and rate schedule~~ the following information for each Capital Spending Project:

~~i.a.~~ The costs incurred during the three months;

~~ii.b.~~ The cumulative amount incurred;

~~iii.c.~~ The estimated total cost;

~~iv.d.~~ The completion date estimated in the MYRP; and

~~v.e.~~ The actual completion date or, if not complete, the current estimated completion date.

(3) A report tracking the changes to any Capital Spending Project, approved by the Commission for inclusion in a multiyear rate plan. The quarterly report shall include at a minimum, the following items:

- a. List of projects impacted by the change, including the project name as originally approved, any change in the scope of the project, and any other projects (new or original) that are impacted by the change.
  - b. For each project identified in subparagraph (a) above, provide:
    - i. The original and revised forecast completion dates, including any revision to the dates when the project was originally scheduled to be placed in service;
    - ii. A statement explaining the purpose/reason for the change;
    - iii. The original and revised cost estimates;
    - iv. The actual spending in each quarter, year-to-date, and project-to-date; and
    - v. The actual costs that have already been recovered through from ratepayers year-to-date and project-to-date.
- (l) Burden of Proof. – The burden of proof as to whether a MYRP mechanism is in the public interest, the correctness and reasonableness of any MYRP, including the planned rate adjustments, Capital Spending Projects, and forecasted expenses, and whether the capital investment and expenses were reasonable and prudently incurred shall be on the utility as provided in N.C.G.S. §§ 62-75 and 62-134.
- (m) Commission Review. – At any time prior to expiration of a PBR plan period, the Commission, with good cause and upon its own motion or petition by the Public Staff, may examine the reasonableness of the electric public utility's rates under the plan, conduct reviews of and hearings on the plan, or initiate a proceeding to adjust base rates or PIMs.
- (n) Rates following Expiration of PBR Ratemaking Mechanisms – Following the expiration of the multiyear plan period, the rates for the current MYRP rate year shall remain in effect until further order of the Commission.
- (o) At least 300 days prior to the expiration of a MYRP, the electric public utility must notify the Commission when it intends to file a new application for a general rate case pursuant to G.S. 62-133 with or without an application for PBR and the requested effective date of new base rates. If the requested effective date of new base rates is after the expiration date of the MYRP, the Commission shall, as provided in G.S. 62-16(e), review the

reasonableness of the electric public utility's rates under the MYRP and establish new base rates for the period immediately following expiration of the MYRP.