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January 5, 2022

VIA Electronic Filing

Ms. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27603

Re: Supplemental Reply Comments of Dominion Energy North Carolina
Docket No. E-100, Sub 178

Dear Ms. Dunston:

Enclosed for filing in the above-referenced docket on behalf of Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina, are the *Supplemental Reply Comments of Dominion Energy North Carolina*.

Please feel free to contact me with any questions. Thank you for your assistance in this matter.

Very truly yours,

/s/Andrea R. Kells

ARK:kjg

Enclosure

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 Implement Performance-Based Regulation of Electric Utilities	))))	**SUPPLEMENTAL REPLY COMMENTS OF DOMINION ENERGY NORTH CAROLINA**

NOW COMES Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina ("DENC" or the "Company") and, pursuant to the North Carolina Utilities Commission's ("Commission") December 30, 2021 *Order Granting, in Part, Motion for Leave* ("Order"), submits these Supplemental Reply Comments in response to the issues identified in paragraphs 13-15 of the Motion for Leave to File Supplemental Reply Comments ("Motion") filed by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC ("Duke") in this proceeding on December 29, 2021. In support thereof, the Company states as follows:

I. INTRODUCTION

On December 17, 2021, the Company filed comments in reply to the initial comments filed in this docket on November 9, 2021. Several other parties submitted reply comments that raised new issues or proposed new rules in addition to those proposed in initial comments. In the Motion, Duke requested that the Commission issue an order granting Duke and the Company leave to file supplemental reply comments on certain new arguments raised by the Public Staff—North Carolina Utilities Commission

("Public Staff"), the Attorney General's Office ("AGO"), and the "Joint Intervenors"[1] on or before January 12, 2022, or seven days after the issuance of an order on the Motion.[2] On the same date, the Company filed a Letter in Support of Duke's Motion, stating that DENC had reviewed the Motion and supported Duke's request for leave to file supplemental reply comments on those limited topics. In the Order, the Commission granted leave to all parties to file supplemental reply comments on the topics identified in paragraphs 13-15 of the Motion by January 5, 2022. Pursuant to the Order, the Company provides for the Commission's consideration the following supplemental reply comments on those topics as identified below. To the extent that the Public Staff's and other parties' initial proposals remain unchanged and not included in the issues identified in paragraphs 13-15 of the Motion, the Company maintains the positions articulated in its reply comments on those issues.

Overall, the Company's position remains as stated in its reply comments that the regulations the Commission adopts in this proceeding should provide flexibility to allow for the continued development of the performance-based regulation ("PBR") framework as the Commission, utilities, and stakeholders gain experience with this new ratemaking approach. The new rules should also operate within the authority granted to the Commission by HB 951[3] and avoid creating additional major standards or procedures not reasonably contemplated by the statute that would add unnecessary inefficiencies to the PBR ratemaking construct.

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[1] The Joint Intervenors include: the Carolina Industrial Group for Fair Utility Rates I, II, and III ("CIGFUR"), the Carolina Utility Customers Association ("CUCA"), the North Carolina Sustainable Energy Association ("NCSEA"), the North Carolina Justice Center ("NCJC"), the North Carolina Housing Coalition, the Sierra Club, and the Southern Alliance for Clean Energy ("SACE").
[2] Duke Motion at PP 13-15.
[3] House Bill 951 (Session Law 2021-165) ("HB 951").

II. SUPPLEMENTAL REPLY COMMENTS

A. Supplemental Reply to the Public Staff

a. Utilities should not be required to file updated depreciation studies with PBR applications.

In its reply comments, the Public Staff recommends revisions to the rule it proposed in its initial comments regarding PBR application filing requirements. These revisions include a new requirement that the utility submitting a PBR application file a depreciation study completed within 180 days of the filing.[4] The Public Staff acknowledges that the utility would file a depreciation study "in most cases," but argues this requirement is needed since "we are in a period when it is expected that utilities will make considerable capital investments and retire other assets early … current depreciation studies are necessary to capture the changes in rate base."[5] The Joint Intervenors echo this proposal.[6]

Consistent with the Company's position in its reply comments that the new PBR rules should retain flexibility and not be overly prescriptive, DENC opposes this proposal. Neither the traditional rate case statute nor the new statute provisions enacted by HB 951 require that a depreciation study be included in a utility's filing. Neither do the Commission's existing rate case rules include any such requirement, and none should be imposed for PBR. The utilities should retain flexibility to submit a depreciation study when appropriate in order to update depreciation rates, but updating a depreciation study should not be a mandatory part of submitting a PBR application, particularly based on

[4] Public Staff Reply Comments at 8, Appendix B at p. 11.
[5] Public Staff Reply Comments at 8.
[6] Joint Intervenors Reply Comments, Appendix A, proposed Rule R8-__(e)(8).

uncertain predictions about the level of utility capital investments and retirements that will occur in the future and considering the cost of such studies.

b. An asymmetrical true-up of MYRP revenue requirements is without basis in HB 951 and unfair to the utilities.

In its initial comments, the Public Staff proposed a rule that would require a utility that cancels or postpones a Capital Spending Project[7] included in a multiyear rate plan ("MYRP") to "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 of the MYRP rate period."[8] In addition, the Public Staff proposed that if the utility makes another 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.[9] Finally, the Public Staff proposed that a utility not be permitted to substitute one or more Capital Spending Projects for an already Commission-approved capital spending project without Commission approval.[10]

The Company opposed these proposals in its reply comments.[11] First, DENC stated that this proposed process would inequitably penalize a utility for making a prudent decision to cancel or postpone a capital project. Additionally, the process would

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[7] The Public Staff defines a Capital Spending Project to mean "the acquisition, construction, installation, retrofitting, rebuilding, or other 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 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." Public Staff Initial Comments at Appendix A, p. 1.

[8] *Id*. at 5, Appendix A, p. 15.

[9] *Id*. at Appendix A, p. 15.

[10] *Id*.

[11] DENC Reply Comments at 4-5.

not allow the utility to seek to recover prudently incurred increased costs for capital projects without filing a new rate case. Finally, this proposed process would effectively create an additional rate adjustment not contemplated by HB 951. The statute specifically established annual rate adjustments for the earnings sharing mechanism ("ESM"), decoupling, and performance incentive mechanism ("PIM") components of a MYRP,[12] but did not contemplate an additional rate adjustment for canceled or postponed projects like that proposed by the Public Staff. In fact, the ESM rate adjustment contained in HB 951 already provides that the Commission will hold an annual proceeding to examine the earnings of a utility during each rate year of a MYRP and authorize refunds to customers if the utility over-earns in excess of 50 basis points above the authorized rate of return on equity.[13]

In its reply comments, the Public Staff significantly expands the scope of its initial proposal, such that a utility would be required to annually recalculate the revenue requirement for each Capital Spending Project for each year of the MYRP to reflect actual costs of capital spending projects and to issue a refund if the newly calculated revenue requirement for any individual project is lower than was projected.[14] This requirement appears to be intended to apply even if the utility has not exceeded the earnings cap prescribed by N.C. Gen. Stat. § 62-133.16(c)(1).a. or is earning below the Commission-authorized return on equity. However, if the new revenue requirement based on actual costs for any individual Capital Spending Project is *greater* than the

[12] N.C. Gen. Stat. § 62-133.16.C.
[13] N.C. Gen. Stat. § 62-133.16.C.1.c.
[14] Public Staff Reply Comments at 9-10; Appendix B at pp. 16-19.

projected revenue requirement, the proposed rule specifically provides that the utility *would not* collect any additional revenue from customers.[15]

The Company continues to oppose the Public Staff's originally proposed rule regarding changes to capital projects, to the extent it is maintained in the Public Staff's revised proposed rule. The Company also opposes the expanded rule, which inequitably places both the burden of over-recovery and all of the risk of under-recovery on the utility, since it would specifically prohibit a utility from recovering more revenue from customers if its revenue requirement ends up exceeding the amount originally approved. The new proposal is also unnecessary, as HB 951 and the Public Staff's initially proposed rule already prescribes a process for annual review of the utility's earnings and adjustments to account for over-earnings beyond the 50 basis point range. The Public Staff's revised proposal would essentially create mini-base rate cases during each year of a MYRP and require an annual base rate adjustment that is not contemplated by HB 951. HB 951 prescribed three riders; if the General Assembly had intended the revenue requirement for individual capital projects to be adjusted each year it would have provided for such an adjustment in the statute. If, however, the Commission does adopt the Public Staff's proposal for an adjustment to the revenue requirement to benefit customers, it should also include in the rule a provision for a revenue adjustment to allow the utility to recover its costs if the approved revenue requirement is less than the actual costs of any Capital Spending Project.

[15] *Id*. at Appendix B at p. 18 (subsection 4(b)).

c. Multiple investigations of the reasonableness and prudence of the same items of cost of service would create regulatory uncertainty and unnecessary inefficiencies.

The Public Staff's initially proposed rule provides that the Commission shall conduct an annual review of a utility's earnings "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."[16] This proposed rule would implement N.C. Gen. Stat. § 62-133.16(c)(1), which provides for an annual review of the utility's earnings under PBR rates, and the Company did not oppose it.

With its reply comments, the Public Staff adds subsection (j)(6), which provides that

> 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 and 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.[17]

The Joint Intervenors make a similar proposal.[18] The Company opposes these newly proposed provisions, which would embed regulatory uncertainty in the Commission's rules. If a Commission order on MYRP annual audit concludes that revenues, expenses,

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[16] *Id*. at Appendix B at p. 20 (subsection (2)a).
[17] *Id*. at Appendix B at p. 24 (subsection (j)(6)).
[18] Joint Intervenor Reply Comments, Appendix A, proposed Rule R8-__(j)(6). Joint Intervenors' proposal appears to be broader in scope than the Public Staff's: "[a]ny position, argument, action, or recommendation of any intervenor in any Annual Review and Reconciliation Proceeding [defined to include not only the annual ESM review but also the PIMs and the decoupling reviews] conducted pursuant to this subsection regarding the reasonableness or prudence of revenues, expenses, or rate base items will be subject to a reservation of that intervenor's rights to review and contest the reasonableness and/or prudency of Capital Spending Project costs in future rate cases. Similarly, no conclusion, finding, or ordering language of the Commission regarding the reasonableness or prudence of revenues, expenses, or rate base items shall preclude an intervenor from investigating, reviewing, or contesting – and the Commission finding – that cost recovery should be disallowed for any costs that were not reasonably or prudently incurred."

or items of rate base are reasonable and prudent, the utility should be able to rely on that conclusion in bringing forth its next rate case and not be forced to re-litigate those findings.

d. The Commission already has authority to consider appropriate evidence regarding changes in utility costs, which authority should not be changed by rulemaking.

The Public Staff's initially proposed rule provided that when reviewing a PBR application, the Commission "shall consider such relevant, material, and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues, or the cost of the electric public utility's property used and useful in the MYRP rate years, in providing the service rendered to the public within this State."[19] The Company did not oppose this proposed rule. While it is perhaps unnecessary given the existence of N.C. Gen. Stat. § 62-133(c)[20] and new Section 62-133.16(g),[21] it substantially tracks the language of Section 62-133(c) and therefore does not give the Commission additional authority beyond that already granted under the law.

In its reply comments, the Public Staff proposes to modify its initially proposed rule to provide that the Commission "shall" consider evidence showing not only "actual" but also "estimated" changes in costs, revenues, or the cost of the utility's property used and useful "expected to be experienced" in the MYRP rate years.[22] The Company

[19] Public Staff Reply Comments, Appendix B at p. 16 (subsection (f)(7) (non-redlined portion)).
[20] Section 62-133(c) provides in relevant part "The test period shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective, but the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, 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."
[21] New section 62-133.16(g) provides in relevant part: "Commission Authority Preserved. – Nothing in this section shall be construed to (i) limit or abrogate the existing rate-making authority of the Commission or (ii) invalidate or void any rates approved by the Commission prior to the effective date of this section."
[22] Public Staff Reply Comments, Appendix B at p. 16 (subsection (f)(7)).

opposes this revision; it exceeds the specificity provided by the rate case statute and unnecessarily binds the Commission's review. First, Section 62-133(c) limits the additional evidence the Commission may consider by "circumstances and events occurring up to the time the hearing is closed" and does not permit reliance on estimates of future costs. Section 62-133(d) requires that the Commission also "consider all other material facts of record that will enable it to determine what are reasonable and just rates." The Commission therefore arguably has authority under this statute to consider evidence of future estimated costs. However, the wording of the Public Staff's proposed rule is more specific than the statute. While the statute requires the Commission to consider all other material facts of record, and allows the Commission to determine what those "other material facts of record" are, the Public Staff's proposed rule specifically requires the Commission to consider evidence regarding estimated changes in costs expected to be experienced during the MYRP years. Not only is this wording not found in Section 62-133(c), neither is it contained in Section 62-133.16. The Company also agrees with Duke's statement in the Motion that this proposal essentially attempts to rewrite N.C. Gen. Stat. § 62-133(c) to provide for a projected test year based on "estimates" instead of actuals, which would be contrary to the historical test year basis of ratemaking prescribed by Chapter 62. If, however, the Commission determines it to be necessary to include additional guidance in the rule on the scope of evidence that the Commission should consider in reviewing a PBR application, the rule could track the more general language of Section 62-133(d), just as proposed subsection (f)(7) tracks the language of Section 62-133(c), rather than impose a level of prescription on the Commission that is unnecessary and not contemplated by the statute.

e. Requiring longer lead time between a utility's request for technical conference and filing notice of a PBR rate case is not necessary and is unduly burdensome on the utilities.

In its initial proposed rule, the Public Staff proposed that a utility request a technical 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.[23] When the Public Staff's proposed rule that a utility may not make any changes in any rate or implement any component of its PBR application except upon 30 days' notice to the Commission[24] is considered, this means that the request for technical conference would be submitted 120 days prior to filing the PBR application. The Company did not object to this proposed rule in its reply comments.

The Public Staff has revised its proposed rule to require the utility's request for a technical conference to be filed no later than 120 days prior to filing the notice of intent.[25] The Joint Intervenors make the same proposal.[26] The result of this change would be that a utility would be required to file its technical conference request 150 days prior to submitting the rate case application. The Company opposes this proposal. HB 951 prescribes a period of no more than 60 days for the technical conference process.[27] The Public Staff's original proposal would therefore allow at least 60 days from the conclusion of the technical conference to the utility's filing of the PBR application, which is sufficient time for the utility make any adjustments needed to the application as a result of the technical conference and balances the statutorily-defined role of the technical

[23] Public Staff Reply Comments, Appendix B at p. 4 (subsection (d)(1) (see strikethrough)).
[24] Public Staff Reply Comments, Appendix B at p. 14 (subsection (f)(1)).
[25] Public Staff Reply Comments, Appendix B at p. 4 (subsection (d)(1)).
[26] Joint Intervenor Reply Comments, Appendix A, proposed Rule R8-__(d)(1).
[27] N.C. Gen. Stat. § 62-133.16(j)(3).

conference of reviewing the utility's projected transmission and distribution expenditures with the interest in filing an accurate PBR application. Requiring the utility to start the PBR case process more than half a year before actually filing an application is excessive and unnecessary and could increase the risk that by the time the application is filed the outcome of the technical conference could be stale.

f. Updated proposals for a PBR case filing schedule would further complicate the PBR ratemaking process.

The Public Staff also makes the new recommendation that Duke be prohibited from filing a general rate case with a PBR application until their carbon plan is adopted.[28] The Public Staff proposes a schedule reflecting that proscription, which provides that DENC would file notice of a technical conference in 2025.[29] The Company takes no position on how Duke's carbon plan will interact with any PBR proceedings, but opposes the Public Staff's proposed PBR case filing schedule for the reasons discussed in DENC's reply comments.[30] Specifically, a mandated PBR rate case schedule will likely result in utilities filing additional traditional rate cases, and therefore work counter to the interests of efficiency and resource allocation that the Public Staff and CIGFUR rely on for their scheduling recommendations. This is because, if an under-earning utility needs to bring a PBR case, but is prevented from doing so due to a prescribed staggered PBR rate case schedule, it can still file a traditional rate case in order to address its under-earnings. Consequently, the Commission, the Public Staff, and interested parties will be forced to manage more rather than fewer rate cases.

[28] Public Staff Reply Comments at 14-18.
[29] *Id*. at 18.
[30] DENC Reply Comments at 2-4.

As the Company also explained in its reply comments, particularly for the utility that falls at the "end" of the cycle at any particular point in the staggered schedule, a mandated filing schedule would unnecessarily and inequitably prevent it from bringing a PBR rate case before the Commission when needed to address under-earnings. This consequence is even more pronounced under the Public Staff's revised schedule, which would not permit DENC to file notice of technical conference until three years from now and would not see new rates for the Company go into effect until well into 2026.

Finally, also as stated in DENC's reply comments, the implementation of the Public Staff's revised proposed schedule would continue to present practical difficulties. For example, if the Commission adopted the Public Staff's sample schedule, and it proceeded as proposed, what happens if one of the utilities is not ready, for whatever reason, to file a PBR case when prescribed? Does that utility lose its "place" in the lineup and have to wait several years for another opportunity? The Public Staff's proposal would present more administrative burden than it solves and should not be adopted.

g. Revised proposal regarding new rates to be established upon expiration of the MYRP should be rejected.

The Public Staff's initial comments proposed a subsection (n) providing that "[f]ollowing 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."[31] The Company supported this rule in its reply comments.[32] The Company opposed proposals made by other parties that would force a utility to revert to charging out of date rates approved in

[31] Public Staff Reply Comments, Appendix B at p. 26.
[32] DENC Reply Comments at 6.

previous years or cases at the end of a MYRP period. DENC explained that reversion back to stale rates that were established prior to the MYRP rate period would waste the time and resources expended to implement HB 951 and nullify the statute's provision for the establishment of rates that more precisely reflects a utility's capital investments during each year of that period.[33]

However, in its reply comments, the Public Staff has added a subsection (o) to its proposed rule, which states that:

> 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-[133.]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.[34]

The Public Staff states that it intends this new proposal to address a concern raised in its discussions on this issue with CUCA, CIGFUR, NCSEA, and NCJC, *et al*., about the potential for utility "overearning and the time required to rectify the issue."[35] Specifically, the Public Staff cited these parties' concern regarding 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."[36] The practical result of this new provision would be that, if the utility was required to notify the Commission of its future rate case plans at least 300 days prior to the expiration of a MYRP, and the proposed effective date of new rates under the utility's next planned rate

[33] *Id*. at 5-7.
[34] Public Staff Reply Comments, Appendix B at pp. 26-27.
[35] Public Staff Reply Comments at 13.
[36] *Id*.

case falls after the expiration of the MYRP, then the rates in effect during the last year of the MYRP would only continue in effect until the Commission establishes new base rates based on an investigation it would undertake at that time.

The Company opposes the Public Staff's proposed new subsection (o). As explained in DENC's reply comments, if a utility elects to file a PBR rate case with the Commission pursuant to HB 951 and the rules to be established through this proceeding, and that case results in a MYRP approved by the Commission, the resulting MYRP will represent a significant investment of time and resources by the utility, the Commission, the Public Staff, and other parties to evaluate the utility's proposal. The final year of that MYRP will reflect ESM, decoupling, and PIM-related adjustments to the originally approved PBR rates as prescribed by the statute and will represent the most accurate reflection at that point in time of the utility's ongoing level of required revenue. At the end of the PBR period, the utility's rates should therefore remain at the level approved for the final year of the MYRP. This approach is reasonable and appropriate because the rates that remain in effect will represent the utility's most recently reviewed and approved rate base and rate of return, arrived at based on a proceeding in which the Commission and interested parties would have had full opportunity to evaluate the utility's investments.

Additionally, the Commission already has the authority to institute review of utility rates under current law.[37] This is evidenced by the same 2004 proceeding cited by the Public Staff.[38] Additionally, as noted above, HB 951 specifically provides that the

[37] *See* N.C. Gen. Stat. §§ 62-130(d), -133(a), -136(a), and -137.
[38] Public Staff Reply Comments at 13; *see also* Docket No. E-22, Sub 412 (investigating the Company's rates pursuant to the above-cited statutes).

Commission's existing rate-making authority is not limited or abrogated by the new statute provisions.[39] The Public Staff's new proposal is therefore unnecessary and would essentially result in the equivalent of *more frequent*, not less frequent, rate cases, as the Commission would be required to review rates at the expiration of a MYRP, regardless of whether any evidence was presented of the need for a rate review at that time.

Moreover, the logistics contemplated by this proposal, when combined with the schedule for PBR application filings the Public Staff has proposed, would likely always result in a Commission investigation, since it is impossible for the utility to file another rate case with rates to take effect at end of the MYRP based on the schedule proposed by the Public Staff.

Finally, it would be unreasonable—and create customer confusion—to expect the utilities to provide public notice of future rate case plans, including the intended effective date of new rates, which may well change, almost a full year before the end of a three-year rate period.

B. Supplemental Reply to the Attorney General's Office

a. The Commission should not adopt proposals that would unnecessarily complicate and expand the scope of the PBR construct.

The AGO makes several recommendations that would unnecessarily complicate and elongate the PBR ratemaking process and expand the scope of this new construct beyond the parameters provided in HB 951.

First, the AGO recommends adding specific provisions in the PBR rules to prioritize PBR proposals that are optimal in timing and generation and resource mix for

[39] N.C. Gen. Stat. § 62-133.16(g).

advancement of Duke's carbon plan and effective for IRP purposes.[40] While the precise intent of the AGO's proposal with respect to being "effective for IRP purposes" is not clear, and recognizing that the Company is not subject to the carbon plan mandate as is Duke, DENC opposes the AGO's proposal with respect to IRP to the extent it is intended to apply to the Company. The PBR process authorized by HB 951 does not contemplate any criteria related to IRP and the AGO's proposal would simply add complexity and inefficiency to this new process. As discussed above, DENC believes the overarching goals of the rules to be established in this proceeding are flexibility, efficiency, and consistency with the scope of the authority granted by the statute, and the AGO's proposal appears to contradict those objectives and should be rejected.

The AGO also proposes that the Commission: (i) establish a separate policy goals proceeding to establish a "goal-outcome hierarchy;" (ii) utilize a separate docketed proceeding to "further outline and articulate guiding principles and criteria to inform alternative regulatory mechanism design within a utility's PBR application;" and (iii) direct utilities to submit in conjunction with their IRP and carbon plan filings a detailed capital investment plan for projects that would be eligible and authorized for inclusion in a subsequent PBR application and proposed MYRP.[41] As articulated in the Company's reply comments, the Commission should reject proposals to establish separate "pre-PBR case" dockets to address policy issues. Such proceedings would exceed the scope of the PBR process authorized by HB 951 and would add significant complexity and inefficiency to this new process.

[40] AGO Reply Comments at 4, 27; Appendix at pp. 1-3, 5.
[41] AGO Reply Comments at 6-20.

b. The 4% statutory cap on overall annual rate increases should not be applied to each customer class.

HB 951 provides that the amount of rate increase during each rate year of a MYRP beyond the first year cannot exceed 4% of the utility's North Carolina retail jurisdictional revenue requirement.[42] The AGO argues that the statutory 4% cap on overall annual rate increases should be applied such that the rate increase for each individual customer class cannot exceed 4%.[43] This proposal should be rejected as it is overly prescriptive and not contemplated by the statute. This is a good example of an area where the most reasonable approach is to leave flexibility for PBR to evolve over time as the Commission, the utilities, and the parties gain experience with this new construct, and the AGO offers no justification for such a prescriptive requirement.

c. The recommendation to suspend a utility's annual fuel factor adjustment during the MYRP contravenes North Carolina law.

The AGO contends that decoupling shifts risk from utility to residential customers and that the Commission should shift some risk back to the utility by fixing fuel costs over the three-year period.[44] The AGO claims that "[n]ot allowing fuel adjustments during the [MYRP] would also encourage the utility to rely on resources that have more predictable energy costs."[45] The AGO appears to rely on its statement that Section 62-133.16(c)(2)[46] "is very specific and does not mention that adjustments for changes in fuel costs may be reflected in the targets established in the PBR case" as support for this proposal.

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[42] N.C. Gen. Stat. § 62-133.16(c)(1).a.
[43] AGO Reply Comments at 21.
[44] *Id*. at 22-24.
[45] *Id*. at 24.
[46] This provision states that the utility "may exclude rate schedules or riders for electric vehicle charging … from the decoupling mechanism."

The AGO's proposal and justification read a meaning and result into Section 133.16(c)(2) that could not have been intended. This proposal would prohibit a utility from utilizing its fuel rider for the duration of a MYRP, directly in contravention of N.C. Gen. Stat. § 62-133.2. That result is not supported by the plain language of HB 951 and cannot be reasonably inferred from the statute. The Commission should therefore reject this recommendation.

d. Proposed mandatory criteria for Commission's PBR application evaluation are beyond the scope of HB 951.

The AGO proposes a number of new mandatory criteria for the Commission's evaluation of a PBR application.[47] These proposals are either beyond the scope of HB 951 (*e.g.*, enhancing resilience of the grid) or are already provided for in the statute or within the Commission's authority to review (*e.g.*, rates are just and reasonable). These proposals are too detailed for a new ratemaking construct, inappropriately overlap with resource planning issues more appropriately addressed in IRP proceedings, and do not provide the flexibility that the Commission, the utilities, and other parties including the Public Staff will need to determine the right level of information to be required for a PBR application. The requirements provided by the proposed rules contained in Exhibit A to Duke's initial comments provide an appropriate level of detail to be included in PBR applications and should be adopted.

C. Supplemental Reply to the Joint Intervenors

In addition to proposals echoing those made by the Public Staff addressed above, the Company replies in this section to several additional new proposals made by the Joint Intervenors in their reply comments.

[47] AGO Reply Comments Appendix at p. 7.

a. Joint Intervenors' technical conference proposals should be rejected.

In addition to echoing the Public Staff's recommendation that the period between a utility's request for a technical conference and filing of PBR application be extended from 90 to 120 days, the Joint Intervenors propose a two-phase technical conference process.[48] During the first phase, the utility would make its presentation; interested parties would make presentations during the second phase, which the Joint Intervenors propose be scheduled no less than 30 days after the first phase. The Company opposes the Joint Intervenors' prescription of a schedule and process for the technical conference. Duke's proposed rule as submitted on November 9, 2021, which provided that "[a]t the pre-filing technical conference, interested parties are permitted to provide comment and feedback in such manner as may be ordered by the Commission…," provides the appropriate level of discretion to the Commission to organize and schedule a technical conference.[49]

More importantly, however, the Joint Intervenors' proposed rule would expand the scope of the technical conference beyond the projected transmission and distribution expenditures specified by HB 951. The Joint Intervenors' proposed subsection (d)(2) states that "[i]n the first phase of the Technical Conference, the electric public utility shall present the following information regarding *Capital Spending Project* expenditures…" (emphasis added) and then proceeds to require the same information as the Public Staff originally required for projected transmission and distribution

[48] Joint Intervenor Reply Comments, Appendix A, proposed Rule R8-___(d)(1).

[49] The Public Staff's initially proposed rule language accomplishes the same result without being overly prescriptive: "[s]ubject to the Commission's scheduling order, interested parties will have an opportunity to provide both comment and feedback as specified by the Commission…."

expenditures. The term "Capital Spending Project" is defined to include any expenditure related to electric public utility operations and is not limited to transmission and distribution projects. This change contravenes the plain language of HB 951, which states that the Commission shall adopt rules that address "[t]he parameters for a technical conference process to be conducted by the Commission prior to the submission of any PBR application consisting of one or more public meetings at which the electric public utility presents information regarding projected transmission and distribution expenditures…."[50] The rule adopted for the technical conference should maintain the scope of the conference to projected transmission and distribution expenditures as stated in HB 951.

Finally, the Joint Intervenors' proposals for additional information related to each "Capital Spending Project" that a utility would be required to provide at the technical conference[51] should be rejected as this information would effectively convert the technical conference into a resource planning proceeding, which as the Company has discussed is beyond the scope of the PBR process authorized by HB 951 and would add significant complexity and inefficiency to this new process.

b. Proposed additional PBR filing requirements are overly prescriptive.

The Joint Intervenors also propose new PBR filing requirements,[52] including (i) granular forecasting data relating to transmission and distribution investments, including projected investments identified by specific geographic locations; (ii) detailed justifications for spending projects, including the rationale for selecting each of the

[50] N.C. Gen. Stat. § 62-133.16(j)(3).
[51] Joint Intervenors Reply Comments, Appendix A, proposed Rule R8-__(d)(2).
[52] *Id*. at proposed Rule R8-__(e).

proposed projects; (iii) utility statement that inclusion of a project in a MYRP by the Commission does not constitute a prudence determination; and (iv) comparisons showing how operational benefits of capital spending projects are factored into proposed revenue requirement. As with the AGO's proposals addressed above, these proposals are too detailed for a new ratemaking construct and do not provide the flexibility that the Commission, the utilities, and other parties including the Public Staff will need to determine the right level of information to be required for a PBR application. The requirements provided by the proposed rules contained in Exhibit A to Duke's initial comments provide an appropriate level of detail to be included in PBR applications and should be adopted.

c. Proposals that would unduly complicate the annual review process should be rejected.

The Joint Intervenors propose additional requirements for the annual PBR review process, including the filing of testimony and exhibits by the utility and intervenors for purposes of the ESM annual review.[53] These proposals would add unnecessary procedure and resources and result in mini-rate cases every year of a MYRP and should be rejected.

The Joint Intervenors also propose a rule requiring that "any interested party" be granted "full intervention status and rights" during the annual review process.[54] If the Joint Intervenors are simply clarifying that they can use the process outlined at Commission Rule R1-19 to petition to intervene in the annual review case(s), the Company does not object, though this rule seems unnecessary. If, however, the Joint

[53] *Id*. at proposed Rule R8-__(j)(2).
[54] *Id*. at proposed Rule R8-__(j)(5)d.

Intervenors are proposing that they will automatically be made parties to the annual MYRP cases, the Company opposes that proposal; any interested party should utilize the Rule R1-19 procedure to intervene in any Commission proceeding.

III. CONCLUSION

WHEREFORE, Dominion Energy North Carolina respectfully requests that the Commission accept these Supplemental Reply Comments and issue an order adopting the proposed rules presented by Appendix A to the Duke Utilities' Initial Comments filed on November 9, 2021, declining to adopt other new proposals as discussed herein, and making such other determinations as are necessary and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Supplemental Reply Comments of Dominion Energy North Carolina*, as filed in Docket No. E-100, Sub 178, was served electronically or via U.S. mail, first-class, postage prepaid, upon all parties of record.

This, the 5th day of January, 2022.

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