

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-100, SUB 178

In the Matter of
Rulemaking Proceeding to Implement)
Performance-Based Regulation of Electric)
Utilities)

INITIAL COMMENTS OF
OF TECH CUSTOMERS

Intervenors Apple Inc., Meta Platforms, Inc., and Google LLC (collectively, “Tech Customers”), by and through counsel, respectfully submit these initial comments pursuant to the Commission’s Order Requesting Comments and Proposed Rules issued on October 14, 2021, regarding the adoption of rules to implement the Performance-Based Regulation provisions of House Bill 951 (S.L. 2021-165).¹

Background

On October 13, 2021, the Governor signed into law S.L. 2021-165 enacting, among other laws, N.C. Gen. Stat. § 62-133.16, which authorizes Performance-Based Regulation (“PBR”) and requires the Commission to adopt specified rules to implement PBR. *See* N.C. Gen. Stat. 62-133.16(l). Consistent with this legislation, on October 14, 2021, the Commission issued its Order Requesting Comments and Proposed Rules in the above-referenced proceeding requesting comment, generally, on relevant issues relating to the implementation of PBR and, specifically, on the issues identified in N.C. Gen. Stat. § 62-133.16(j) as appropriate for rulemaking.

¹ By contemporaneous filing, the Tech Customers have sought to intervene as parties to this proceeding.

Initial Comments

As significant consumers and users of utility services in North Carolina—and as corporate entities that consistently advocate for green energy solutions that permit them to operate consistent with the highest corporate sustainability goals—the Tech Customers are keenly interested in the Commission’s implementation of House Bill 951, which requires the Commission to “take all reasonable steps to achieve a seventy percent (70%) reduction in emissions of carbon dioxide (CO₂) emitted in the State from electric generating facilities owned or operated by electric public utilities from 2005 levels by the year 2030 and carbon neutrality by the year 2050.” *See* House Bill 951, at sec. 1.

The Tech Customers recognize that most significant implementation issues concerning PBR will be resolved in the context of a contested hearing process but nonetheless would urge the Commission to consider the following general points as it considers the adoption of PBR rules.

(1) Achievement of specified policy goals.

PBR should be viewed as a tool related to the achievement of the overall policy goals set forward in House Bill 951. In this context, the adoption of the PBR should not be viewed in a vacuum—as merely a means to address, for example, regulatory lag—but should be viewed as a tool to implement larger policy goals, while ensuring that consumers are protected from adverse effects.

To this end, the PBR law expressly *requires* the Commission to consider in connection with any PBR application interclass rate fairness and fairness to consumers; the continuation of safe and reliable electric service; and unfair prejudice to any class of electric customers and/or the potential for consumer “rate shock.” *See* N.C. Gen. Stat. § 62-133.16(d)(1).

Similarly, the PBR law permits the Commission to consider a variety of enumerated policy concerns, including to ensure that any proposed plan:

- (1) Encourages peak load reduction or efficient use of the system.
- (2) Encourages utility-scale renewable energy and storage.
- (3) Encourages DERs.
- (4) Reduces low-income energy burdens.
- (5) Encourages energy efficiency.
- (6) Encourages carbon reductions.
- (7) Encourages beneficial electrification, including electric vehicles.
- (8) Supports equity in contracting.
- (9) Promotes resilience and security of the electric grid.
- (10) Maintains adequate levels of reliability and customer service.
- (11) Promotes rate designs that yield peak load reduction or beneficial load-shaping.

See id. § 62-133.16(d)(2).

Together, these provisions help to drive home that the overriding purpose of the legislation is to authorize, on a permissive basis, new regulatory mechanisms that create flexibility around the achievement of specified policy goals—with paramount consideration given to impacts on consumers and the promotion of safe and reliable electric service.

The rules adopted by the Commission should ensure that the Commission retains the authority, as set forth in the legislation, to consider the larger context of any particular plan and how that plan helps to achieve other related goals while protecting consumers.

(2) Transparency and stakeholder participation.

Consistent with the discussion above, it will be imperative that any proposed rules implementing PBR be drafted with a view to promoting transparency and meaningful stakeholder participation.

As an example, the PBR law contemplates that an electric utility might submit a multiyear rate plan (“MYRP”) as a component of a proposed plan. The Commission, of

course, retains authority to approve or deny a MYRP application as it deems appropriate by applying the statutory criteria, and this criteria requires, among other things, that rates under a MYRP are to be established based on a “known and measurable set of capital investments, net of operating benefits, associated with a set of discrete and identifiable capital spending projects.” *See id.* § 62-133.16(c)(1)a. Basing rate adjustments on forecasted costs will require a high level of specificity about proposed spending and projected operating benefits to satisfy the statutory standard and allow for meaningful review by the Commission. Such specificity will also afford stakeholders an opportunity to participate fully and effectively in the hearing process.

Similarly, the Commission’s rules should make clear that intervenors have full rights as parties to the proceeding to seek discovery on matters relating to a proposed PBR and to offer testimony and other evidence on a PBR, including offering proposed additions, changes, and supplements to any plan put forward by the utility. As an example, intervenors may wish, and are permitted under the procedures contemplated by Section 62-110.16, to propose additional or modified performance incentive mechanisms (“PIMs”) to address utility performance in targeted areas consistent with policy goals as defined by the PBR statute. Ensuring that the Commission’s rules respect transparency and stakeholder participation is necessary to effectuate the overall intent and structure of the PBR law.

Conclusion

Tech Customers respectfully request that the Commission consider the foregoing Initial Comments. The Tech Customers look forward to reviewing the comments and proposed rules offered by other stakeholders and offering further comment as may be appropriate and constructive to the Commission’s decision making.

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



Marcus W. Trathen
N.C. State Bar No. 17621
BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, LLP
Suite 1700, Wells Fargo Capitol Center
150 Fayetteville Street
P.O. Box 1800 (zip 27602)
Raleigh, NC 27601
(919) 839-0300, ext. 207 (phone)
(919) 839-0304 (fax)
mtrathen@brookspierce.com

Matthew Tynan
N.C. State Bar No. 47181
BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, LLP
Suite 2000 Renaissance Plaza
Greensboro, North Carolina 27401
(336) 373-8850
(336) 378-1001 (fax)
mtynan@brookspierce.com

*Attorneys for Apple Inc., Meta Platforms,
Inc., and Google LLC*

Certificate of Service

I hereby certify that a copy of the foregoing *Initial Comments of Tech Customers* has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail or by delivery to the United States Post Office, first-class postage pre-paid.

This the 9th day of November, 2021.

BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, LLP


