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**VIA Electronic Filing**

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

*Re: 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 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 ) **REPLY COMMENTS OF**  
Electric Utilities ) **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”) October 14, 2021 *Order Requesting Comments and Proposed Rules* (“October 14 Order”) and November 24, 2021 *Order Granting Extension*, submits these Reply Comments in response to the initial comments filed in this proceeding on November 9, 2021. In support thereof, the Company states as follows:

**I. INTRODUCTION**

On November 9, 2021, the Company filed a Letter in Lieu of Initial Comments in response to the October 14 Order, stating that it had reviewed the proposed rule filed on the same day by Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (“Duke Utilities”), generally supported the Duke Utilities’ proposed rule, and did not have other initial comments at that time. The Company reserved its right to file reply comments in response to initial comments submitted by other parties to this proceeding. Based on the parties’ initial comments, the Company provides the following reply comments for the Commission’s consideration.

## II. REPLY COMMENTS

### A. Rules adopted to implement HB 951 should be flexible, consistent with the parameters of the Commission’s authority granted by the statute, and structured to promote efficiency.

DENC generally agrees with the reply comments presented by the Duke Utilities.<sup>1</sup>

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<sup>2</sup> and avoid creating additional major standards or procedures not reasonably contemplated by the statute that would add unnecessary inefficiencies to the new PBR ratemaking construct.

The Company provides additional reply comments below on issues of particular interest to DENC.

### B. Mandating a prescribed schedule for PBR filings would complicate rather than simplify the PBR ratemaking process.

The Company opposes proposals to prescribe a schedule for utilities to bring PBR rate cases to the Commission. The Public Staff proposes to prescribe a staggered schedule for each of the Utilities to file a PBR rate case, with each utility filing a PBR case in a designated year in three-year cycles.<sup>3</sup> Similarly, CIGFUR proposes that the Commission require that the utilities stagger their PBR filings such that a utility cannot

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<sup>1</sup> DENC has not reviewed the report prepared for the Duke Utilities by Pacific Economics Group and the Company’s reply comments therefore do not intentionally reflect or address the contents of that report.

<sup>2</sup> House Bill 951 (Session Law 2021-165) (“HB 951”).

<sup>3</sup> Public Staff Initial Comments at 5-7.

file a PBR rate case if another utility has filed a PBR case within the preceding 180 days.<sup>4</sup>

The Commission should not prescribe a PBR rate case filing schedule. 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 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, Public Staff, and interested parties will be forced to manage more rather than fewer rate cases.

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 them from bringing a PBR rate case before the Commission when needed to address under-earnings. For example, if the Commission were to adopt the Public Staff’s sample schedule of DEC filing in October 2022, DEP filing in October 2023, and DENC filing in October 2024, DENC would not be able to bring a PBR rate case for almost three years from now. While the Public Staff’s proposal that the mandated staggered schedule be open to modification may appear on its face to ameliorate this result, it actually could worsen the overall inefficiency of the process. That is because the Commission, Public Staff, and other parties may spend time and

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<sup>4</sup> CIGFUR Initial Comments at 10.

resources considering, first, utilities' requests for modification and, then in addition a PBR rate case or, if the modification is denied, a traditional rate case.

Finally, the implementation of these proposals would present practical difficulties. For example, if the Commission adopted the Public Staff's sample schedule, and it proceeded as proposed, what happens if DEC does not then file another PBR case in 2025? Does DEC lose its "place" in the lineup? With regard to CIGFUR's proposal, what happens if two utilities file a rate case on the 181<sup>st</sup> day after the third utility filed its own case? Which one does the Commission allow to proceed? These proposals will present more administrative burden than they solve and should not be adopted.

**C. Utilities should not be required to pursue an additional rate adjustment for cancelled or postponed capital projects.**

The Public Staff's proposed rules would require a utility that cancels or postpones a Capital Spending Project<sup>5</sup> 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."<sup>6</sup> In addition, the Public Staff proposes 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

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<sup>5</sup> 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.

<sup>6</sup> *Id.* at 5, Appendix A, p. 15.

change, any changes to the projected costs, scope, or timing of the project.<sup>7</sup> Finally, the Public Staff proposes 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.<sup>8</sup>

The Company opposes these proposals. First, this proposed process would inequitably penalize a utility for making a prudent decision to cancel or postpone a capital project. Additionally, the process would 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,<sup>9</sup> but did not in any way address 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 contemplates 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.<sup>10</sup>

**D. Upon expiration of the PBR period, utility rates should remain at the level approved for the final year of a MYRP.**

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

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<sup>7</sup> *Id.* at Appendix A, p. 15.

<sup>8</sup> *Id.*

<sup>9</sup> N.C. Gen. Stat. § 62-133.16.C.

<sup>10</sup> N.C. Gen. Stat. § 62-133.16.C.1.c.

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. The Company supports the Public Staff's proposed rule that clarifies this point.<sup>11</sup> 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.

For the same reasons, the Company opposes recommendations that would force a utility to revert to charge out of date rates approved in previous years or cases at the end of a MYRP period. CIGFUR suggests that if the utility allows the 36-month PBR approved rates to expire without submitting new PBR rates, the utility's rates revert back to the rates fixed under the previous traditional rate case.<sup>12</sup> NCSEA makes a similar proposal.<sup>13</sup> Reversion back to stale rates that were established prior to the MYRP rate period would waste all of the time and resources expended to implement HB 951 and

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<sup>11</sup> Public Staff Initial Comments at Appendix A, p. 22 ("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").

<sup>12</sup> CIGFUR Initial Comments at 7-8.

<sup>13</sup> NCSEA Initial Comments at 30-33.

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.

**E. Proposals that would unnecessarily complicate and expand the scope of the PBR construct should be rejected.**

HB 951 requires the Commission to adopt rules addressing the parameters of a technical conference process to be conducted prior to the submission of a PBR application.<sup>14</sup> Several intervenors propose requirements that would convert the technical conference required by HB 951 into a referendum on a utility's resource planning,<sup>15</sup> or even establish a separate docket to establish policy goals and PIM performance and tracking metrics.<sup>16</sup> HB 951 states that the technical conference will consist of one or more public meetings at which the utility will present information about its projected transmission and distribution expenditures, and that interested parties may provide comment on that information; no cross examination is permitted and the technical conference process is not to exceed 60 days.<sup>17</sup> Intervenors' proposals to remake this process into a detailed proceeding with burdensome information requirements and process far exceed the scope of that authorized by the statute and should not be adopted. Similarly, the Commission should reject proposals to establish separate "pre-PBR case" dockets to address policy issues. Such proceedings are also far afield of the PBR process authorized by HB 951 and would add significant 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

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<sup>14</sup> N.C. Gen. Stat. § 62-133.16(j)(3).

<sup>15</sup> See CIGFUR Initial Comments at 14-15, CUCA Initial Comments at 6, NCSEA Initial Comments at 15-16, 19-20.

<sup>16</sup> NCSEA Initial Comments at 5-7, 18.

<sup>17</sup> N.C. Gen. Stat. § 62-133.16(j)(3).



the authority granted by the statute, and these proposals are inconsistent with all of those goals.

### III. CONCLUSION

WHEREFORE, Dominion Energy North Carolina respectfully requests that the Commission accept these 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 proposals as discussed herein, and making such other determinations as are necessary and proper.

Respectfully submitted,

DOMINION ENERGY NORTH CAROLINA

By: /s/Andrea R. Kells

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December 17, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing 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 17<sup>th</sup> day of December, 2021.

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