

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-100, SUB 178**

In the Matter of:)	
Rulemaking Proceeding to Implement)	NCSEA’S REPLY
Performance-Based Regulation of Electric)	COMMENTS
Utilities		

NCSEA’S REPLY COMMENTS

Pursuant to North Carolina Utilities Commission’s (“Commission”) October 14, 2021 *Order Requesting Comments and Proposed Rules*, and the Commission’s November 24, 2021 *Order Granting Extension*, the North Carolina Sustainable Energy Association (“NCSEA”) hereby offers the following reply comments on the Commission’s adoption of rules to implement performance-based regulation (“PBR”) as set forth in N.C. Gen. Stat. § 62-133.16, which was adopted by S.L. 2021-165 (“House Bill 951”).

As NCSEA noted in its initial comments, it encourages the Commission to exercise the considerable amount of discretionary authority granted to it by the General Assembly in House Bill 951 to adopt quality rules that will establish certainty for all stakeholders as to the PBR process and allow for public participation and review to ensure low and moderate-income ratepayers are not disproportionately impacted.

House Bill 951 ushered in a new regulatory paradigm for North Carolina. The legislation set policy goals dealing with decarbonization, low-income programs, and consumer access to renewables. To this end, Apple Inc., Meta Platforms, Inc., and Google LLC (collectively, the “Tech Customers”) wrote in their initial comments that “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.”¹ In the same vein, the North Carolina Justice Center, North Carolina Housing Coalition, Sierra Club, and Southern Alliance for Clean Energy (collectively, “NCJC et al.”) advocate that “The Commission should take the opportunity in this rulemaking to balance the equities and include these important policy goals enumerated by the General Assembly in any PBR rules that it adopts.”² NCSEA agrees with the Tech Customers and NCJC et al., and believes that the Commission needs to exercise the robust authority granted to it in House Bill 951 and should not cede any authority to the regulated utilities.

I. JOINT PROPOSED RULE

Together with the Carolina Industrial Group for Fair Utility Rates I, II, and III (collectively, “CIGFUR”), the Carolina Utility Customers Association, Inc. (“CUCA”), and NCJC et al., NCSEA is contemporaneously with this filing submitting the *Joint Reply Comments of CIGFUR, CUCA, NCSEA, NC Justice Center, NC Housing Coalition, Sierra Club, and SACE* (“Joint Reply Comments”) which includes as Appendix B a proposed rule implementing PBR and N.C. Gen. Stat. § 62-133.16 (the “Joint Proposed Rule”). As noted in the Joint Reply Comments, NCSEA submits these reply comments to expand upon the Joint Proposed Rule and to address issues identified by other parties.

NCSEA has conferred with the Public Staff – North Carolina Utilities Commission (“Public Staff”) and understands that it intends to propose in its reply comments requiring the utility to notify the Commission of when it intends to file a new application for a general

¹ *Initial Comments of Tech Customers*, Docket No. E-100, Sub 178, at 2 (November 9, 2021) (“*Tech Customers Initial Comments*”).

² *Comments and Partial Proposed Rules Submitted on Behalf of North Carolina Justice Center, North Carolina Housing Coalition, Sierra Club, and Southern Alliance for Clean Energy*, Docket No. E-100, Sub 178, at 16 (November 9, 2021) (“*NCJC et al. Initial Comments*”).

rate case with or without a PBR application, so that if the requested effective date of new base rates is after the expiration date of the MYRP the Commission shall review the reasonableness of the utility's MYRP rates pursuant to N.C. Gen. Stat. § 62-16(e) and establish new base rates for the period following the MYRP. While it is NCSEA's position that the plain language of the N.C. Gen. Stat. § 62-133.16 requires that rates revert to those set pursuant to N.C. Gen. Stat. § 62-133, as articulated in the Joint Reply Comments, NCSEA does note that the Public Staff's position does address NCSEA's concerns with respect to utility overearning pursuant to rates set via overestimated forecasted costs.

II. MAJOR ISSUES REQUIRING THE COMMISSION'S DECISION

While the Joint Proposed Rule represents a complete and comprehensive rule to implement N.C. Gen. Stat. § 62-133.16, there are areas where NCSEA disagrees with the initial comments of Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (DEC and DEP, collectively, "Duke").

A. POLICY GOALS, PIMS, AND TRACKING METRICS

The Tech Customers and NCJC et al. both urge the Commission to consider the impacts of PBR on customers. The Tech Customers argue that, read together, the provisions of N.C. Gen. Stat. § 62-133.16(d)(1) and (d)(2) "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."³ Similarly, NCJC et al. argue that "Reformed regulation should reward public utilities for producing the outputs and achieving the policy goals that society

³ *Tech Customers Initial Comments* at 3.

requires while maintaining affordability of essential electric utility service.”⁴ NCSEA agrees with both the Tech Customers and NCJC et al. that the Commission’s rule implementing PBR cannot and should not focus solely on reducing regulatory burdens for utilities. In adopting its final rule, the Commission should focus on the impacts of PBR on ratepayers of all classes and ensure that ratepayers are receiving improved electric service that advances policy goals at a reasonable and affordable cost.

1. GENERIC POLICY PROCEEDING

In its initial comments, NCSEA suggested that the Commission’s rule adopting PBR should include a policy docket where policy goals, performance incentive mechanisms (“PIMs”), and tracking metrics would be set prior to a PBR application.⁵ In comparison, the Public Staff’s proposed rule set forth that “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 multiyear rate plan (‘MYRP’) may target.”⁶ Under the Public Staff’s proposal, policy goals would be adopted by the Commission in a generic docket, but PIMs and tracking metrics would be determined by the Commission in a PBR application case.⁷ In contrast, Duke’s initial comments and proposed rule were silent on the selection and prioritization of policy goals by the Commission.

NCSEA continues to believe that addressing policy issues in a separate proceeding will lessen the burden on the Commission and on all parties in a PBR application

⁴ NCJC et al. *Initial Comments* at 6.

⁵ NCSEA’s *Initial Comments*, Docket No. E-100, Sub 178, at 6 (November 9, 2021) (“NCSEA *Initial Comments*”).

⁶ *Initial Comments and Proposed Rule of the Public Staff*, Docket No. E-100, Sub 178, at Appendix A, Rule R8-__ (c) (November 9, 2021) (“*Public Staff Initial Comments*”).

⁷ See, *Id.* at Appendix A, Rule R8-__ (e)(4) and (e)(5).

proceeding by lessening the number of issues being litigated. However, in the interest of compromise, in the Joint Proposed Rule NCSEA is supporting the Commission deciding only policy goals in a generic docket and addressing PIMs and tracking metrics in the context of a PBR application proceeding. NCSEA believes that this compromise will allow the Commission to identify big picture policy issues and goals in a generic proceeding that will be applicable for all the utilities but will allow the Commission to customize and adapt PIMs and tracking metrics to fit the needs of each individual utility in their respective PBR application proceedings.

2. PIMs SHOULD BE TARGETED TO INCENT CERTAIN UTILITY BEHAVIOR AND POLICY GOALS

In their initial comments, various parties proposed that the Commission's rules implementing PBR should ensure that PIMs are targeted to incent certain utility behavior and policy goals. NCSEA agrees with both CIGFUR and CUCA that PIMs should incentivize behavior above and beyond what is already required by other regulations or standards. CIGFUR commented "that any PIMs submitted as part of a PBR application should be structured to ensure that the utility is not incentivized to do what it is already obligated to do under current regulations and industry standards."⁸ Similarly, CUCA noted the importance of "any rewards provided to utilities through PIMs be[ing] fully justified in terms of the value that customers receive[]" and that "Rewards should not be used to further incentivize baseline performance requirements, which should be seen as the minimum standards a utility must meet regardless of the type of regulation by which rates are set."⁹

⁸ *Initial Comments and Partial Proposed Rules of CIGFUR I, II, and III*, Docket No. E-100, Sub 178, at 12-13 (November 9, 2021) ("*CIGFUR Initial Comments*").

⁹ Melissa Whited, *Implementing PBR with Customer Protections in North Carolina, Prepared on Behalf of the Carolina Utility Customers Association*, Synapse Energy Economics, Docket No. E-100, Sub 178, at 13 (November 9, 2021) ("*Synapse Report*").

CUCA went on to suggest that “the utility should demonstrate that its proposed PIMs represent an improvement in performance over historical or projected performance levels.”¹⁰ NCSEA agrees with CIGFUR and CUCA that PIMs adopted by the Commission should not reward utilities for achieving performance that is already required by other regulations or requirements.

In its initial comments, NCSEA suggested that the Commission adopt PIMs and policy goals in a separate proceeding, outside the context of the present rulemaking proceeding. While NCSEA still believes that it is appropriate for the Commission to evaluate PIMs and policy goals on a case-by-case basis instead of codifying them in rules, NCSEA does agree with NCJC et al. that “Policy goals relating to reducing low-income energy burdens, encouraging use of DERs and energy efficiency, and reducing carbon pollution should be developed to bring about cost savings and operational efficiency.”¹¹ Should the Commission disagree with NCSEA’s stance that PIMs and policy goals should not be codified in rule, NCSEA supports the inclusion of the six PIMs proposed by NCJC et al. in their initial comments in the Commission’s final rule implementing PBR.¹²

3. PIMs PERFORMANCE MUST BE TRANSPARENT

NCSEA agrees with CUCA and the Tech Customers as to the importance of transparency in the Commission’s rules implementing PBR.¹³ As CUCA pointed out in their initial comments, the only way to combat the information asymmetry between the

¹⁰ *Id.* at 13.

¹¹ *NCJC et al. Initial Comments* at 17.

¹² *See, Id.* at 32-33.

¹³ *See, Tech Customers Initial Comments* at 3; *see, Initial Comments of CUCA*, Docket No. E-100, Sub 178, at 3 (November 9, 2021) (“*CUCA Initial Comments*”).

utilities and the Commission is to require detailed cost and performance disclosures.¹⁴ The Commission must be able to assess whether a PBR plan will unreasonably harm or prejudice any class of customers or pose a threat to the safety and reliability of electric service.¹⁵

For the Commission, Public Staff, and interested parties to have an opportunity to meaningfully assess the effectiveness of PIMs and evaluate utility performance thereunder, the Commission's rules must require that detailed tracking and performance metrics tailored to each PIM be included in any PBR application. Reporting pursuant to such metrics should be publicly filed and available for review by all stakeholders.

While N.C. Gen. Stat. § 62-133.16(c) clearly states that the inclusion of tracking metrics in a PBR application is permissive, any PBR application must include PIMs and PIMs, by definition, must include "specific performance metrics and targets against which utility performance is measured."¹⁶ N.C. Gen. Stat. § 62-133.16(c)(3) also requires that policy goals targeted by a PIM be "measurable with a defined performance metric." Therefor tracking metrics and targets must be included in any PBR application.

Interested parties must be able to independently validate utility performance using the data reported by the utility, which shall include the inputs used in any tracking metric methodology, to ensure customers are receiving improved utility performance in accordance with Commission-approved policy goals. To this end, NCSEA proposes the

¹⁴ See *CUCA Initial Comments* at 3 ("Regulators, the Public Staff, and stakeholders, however, have less information regarding utilities' costs and systems than the utilities themselves—which can make it difficult to assess cost projections. To overcome such information asymmetries, the Commission should require detailed disclosures of utility planning processes and cost information as part of the PBR application.").

¹⁵ N.C. Gen. Stat. § 62-133.16(d)(1).

¹⁶ See, *CIGFUR Initial Comments* at 13.

inclusion of a “Data Dashboard”, further defined in the Joint Proposed Rule, where PIMs performance and specific tracking metric criteria will be publicly reported.

In its initial comments, NCSEA suggested that performance tracking data should be reported to the Commission on a monthly basis.¹⁷ NCSEA maintains that N.C. Gen. Stat. § 62-133.16(e) requires that the Commission remain in a position to monitor a PBR plan so that the Commission, or Public Staff, may determine if further action becomes necessary during the rate year. However, if the Commission believes that reporting quantitative performance tracking data on a quarterly basis will allow it ample time and information to determine whether good cause exists to further adjust PIMs, then NCSEA has no objection to a rule requiring quarterly reporting of performance tracking data.

B. COSTS INCURRED IN ANNUAL REVIEW ARE NECESSARY TO ENSURING FAIR RATES

In Duke’s Initial Comments, Duke warns against the annual PBR proceedings becoming a “mini rate case.”¹⁸ NCSEA believes that such concerns, as outlined in Duke’s Initial Comments at least, are overblown.

1. ANNUAL SCRUTINY IS CONTEMPLATED BY STATUTE AND IS DIFFERENTIATED BY LAW FROM RATE CASE SCRUTINY

Duke’s concerns about a “mini rate case”¹⁹ are not only unfounded but the statute separates annual scrutiny from the type of scrutiny involved in a general rate case. House Bill 951 defines “Performance-Based Regulation” as “an alternative rate-making approach that includes decoupling, one or more performance incentive mechanisms, and a multiyear

¹⁷ NCSEA Initial Comments at 26.

¹⁸ Duke Energy Carolinas, LLC and Duke Energy Progress, LLC’s Initial Comments and Proposed Rules to Implement Performance-Based Regulations of Electric Utilities, Docket No. E-100, Sub 178, at 6 (November 9, 2021) (“Duke Initial Comments”).

¹⁹ *Id.* at 6.

rate plan, including an earnings sharing mechanism, or such other alternative regulatory mechanisms as may be proposed by an utility.”²⁰ House Bill 951 defines “multiyear rate plan” as “a rate-making 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.”²¹ Because the statute specifically separates the “authorized periodic changes in base rates” from requiring a general rate case application, it is clear that the statutory intent is not for these “periodic changes in base rates” to include the requirements of and scrutiny of a general rate case application. NCSEA would posit that such leniency extends to annual review of PBR.

Despite this statutory direction, Duke apparently remains concerned: “the rules adopted by the Commission to implement PBR and MYRP should allow for an efficient and effective process for the annual PBR review that is limited in scope and duration so as to avoid turning the annual review process into a ‘mini rate case.’”²² This concern is unfounded and, as set forth below, effective annual scrutiny is necessary to provide the best outcome for the state and ratepayers.

2. ANNUAL SCRUTINY IS NECESSARY AND THE COST IS COMPARATIVELY DE MINIMIS

When arguing that the PBR annual review should not rise to the level of a general rate case, Duke states that “Rate cases are time-consuming and expensive endeavors for all involved.”²³ NCSEA does not disagree that rate cases are time-consuming and expensive,

²⁰ N.C. Gen. Stat. § 62-133.16(a)(7) (emphasis added).

²¹ N.C. Gen. Stat. § 62-133.16(a)(5) (emphasis added).

²² *Duke Initial Comments* at 6.

²³ *Id.*

particularly for intervenors and agencies who do not have the same staffing levels or resources of a regulated utility. However, NCSEA believes Duke’s argument misses the point: even if the cost of annual review was akin to a full general rate case, the cost would be minimal compared to the potential costs of a poorly run PBR program for ratepayers. The utility’s general rate case costs have often run between \$2 million and \$5 million dollars over the past decade.²⁴ NCSEA would never disregard these substantial costs, much of which is passed onto ratepayers, and NCSEA is certainly distressed at the seemingly rising costs of rate case litigation over time, but it is important to consider these numbers in the context of House Bill 951 and PBR.

In its third quarter 2021 “Earnings Review and Business Update,” Duke Energy estimated a planned \$59 billion in new capital spend, including investments in transmission and distribution investments across all of its territories.²⁵ Of that \$59 billion, about half, or nearly \$30 billion, would be invested in transmission and distribution to “modernize” its grid, including about \$16.2 billion of that investment focused in transmission and distribution upgrades in DEC and DEP’s Carolinas service territories.²⁶ With individual generation investments capped at a cost of \$500 million,²⁷ PBR applications are likely to include a multitude of transmission and distribution assets which, while individually less

²⁴ For example, costs totaled \$2,045,834 in DEC’s 2012 general rate case (Docket No. E-7, Sub 1026) and \$4,963,443 in DEC’s 2017 general rate case (Docket No. E-7, Sub 1146). *See*, DEC Response to Public Staff Data Request No. 129-1 in Docket No. E-7, Sub 1214.

²⁵ *See*, https://desitecoreprod-cd.azureedge.net/_media/pdfs/our-company/investors/news-and-events/2021/3qresults/q3-2021-earnings-presentation-reg-g.pdf?la=en&rev=1322f25118cf4ca88c907fd99692423b, at 19 (Last checked December 15, 2021).

²⁶ *Id.*

²⁷ N.C. Gen. Stat. § 62-133.16(c)(1)a. (“The revenue requirements associated with any single new generation plant placed in service during the MYRP for which the total plant in service balance exceeds five hundred million dollars (\$500,000,000) shall not be included in a MYRP.”).

costly, are cumulatively a very large investment with huge implications on the state and its ratepayers.

Whatever piece of the \$16.2 billion pie that North Carolina is faced with, considerable scrutiny is warranted for any annual PBR review. Moreover, with the escalator provision included in House Bill 951,²⁸ it is imperative that the Commission and stakeholders be allowed considerable deference in review even if the costs associated with such a proceeding are higher than Duke prefers. A \$2 to \$6 million endeavor is worth its cost several times over when compared to Duke's multi-billion dollar spending plan.

3. ANNUAL REVIEW PROCEEDINGS

Duke seek to limit who can participate in PBR Annual Review. Specifically, in its proposed Rule R1-17(m)(10)c.,²⁹ Duke says that the Public Staff can perform annual reviews of Duke's PIMs and earnings sharing mechanisms ("ESMs"), but does not allow for other intervenors to participate. This needless limitation is inconsistent with regulatory review and the participation afforded to interested parties in other ratemaking dockets at the Commission and is an attempt to temper feedback from a diverse set of parties. While the Public Staff is an integral part of this review, the Public Staff has a particular client

²⁸ *Id.* ("Subsequent changes in base rates in the second and third rate years of the MYRP shall be based on projected incremental Commission-authorized capital investments that will be used and useful during the rate year and associated expenses, net of operating benefits, including operation and maintenance savings, and depreciation of rate base associated with the capital investments, that are incurred or realized during each rate year of the MYRP period; provided that the amount of increase in the second rate year under the MYRP shall not exceed four percent (4%) of the electric public utility's North Carolina retail jurisdictional revenue requirement that is used to fix rates during the first year of the MYRP pursuant to G.S. 62-133 excluding any revenue requirement for the capital spending projects to be placed in service during the first rate year. The amount of increase for the third rate year under the MYRP shall not exceed four percent (4%) of the electric public utility's North Carolina retail jurisdictional revenue requirement that is used to fix rates during the first year of the MYRP pursuant to G.S. 62-133, excluding any revenue requirement for the capital spending projects placed in service during the first rate year.").

²⁹ *Duke Initial Comments* at 19 of Exhibit A.

(“the using and consuming public”³⁰) and that client does not always align with needs of other intervenor’s clients. As such, the Commission should reject such a limitation.

4. TRANSPARENCY DURING THE PBR PLAN

NCSEA previously argued in its Initial Comments for transparency in the PBR process.³¹ NCSEA would also like to express agreement with the *Synapse Report*. In the report, Synapse explains best practices in enabling PBR, including requiring Duke to

Make an annual filing that identifies differences between projected investments and actuals, in both cost and quantity, and the reasons for any material deviations. In these filings, the utility should provide project status details for projects subject to an MYRP plan. These details should include the initial budget, the final cost, and the date each project was booked to plant in-service. In addition, for each of these projects, the Company should provide all Company project documents including, but not limited to, business cases, capital project expenditure applications, change order forms, project close out reports, and work orders.³²

The *Synapse Report* goes on to recommend that the Commission “[i]mplement annual rate changes only following a public hearing and prudence determination by the Commission.”³³ These principles regarding PBR transparency and annual proceeding requirements are commendable, and NCSEA agrees with the points made by CUCA via its *Synapse Report*.

C. COMMISSION EVALUATION OF THE CAPITAL SPENDING PLAN

House Bill 951 offers two procedural avenues to allow the Commission and intervenors the opportunity to review the utilities potential capital spending plans. As outlined below, the potential for a pre-approval docket and the technical conference, if enacted correctly, could allow for more efficient and beneficial PBR rate cases resulting in

³⁰ N.C. Gen. Stat. § 62-15(b).

³¹ See, *NCSEA Initial Comments* at 29.

³² *Synapse Report* at 11.

³³ *Id.* at 12.

lower rates for ratepayers and utility investments that further state goals including the emission reduction mandate.

1. PRE-APPROVAL OF CAPITAL INVESTMENTS

NCSEA has conferred with the Public Staff and understands that it intends to propose a set schedule for DEC, DEP, and Dominion Energy North Carolina (“DENC”) to follow when filing PBR applications (the “Public Staff’s Proposed Schedule”). As discussed further below, NCSEA is supportive of the Public Staff’s Proposed Schedule. As noted in NCSEA’s Initial Comments, the Carbon Plan will greatly inform the set of capital expenditures Duke will seek to recover through a PBR application.³⁴ Therefore, the Commission “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.”³⁵ NCSEA believes the Public Staff’s Proposed Schedule adequately addresses this concern by delaying the first technical conference process until January of 2023.

NCSEA finds further support for requiring the Carbon Plan to be approved prior to Duke filing its first PBR application in the statutory language, which requires:

Subsequent changes in base rates in the second and third rate years of the MYRP shall be based on *projected incremental Commission-authorized capital investments* that will be used and useful during the rate year and associated expenses, net of operating benefits, including operation and maintenance savings, and depreciation of rate base associated with the capital investments, that are incurred or realized during each rate year of the MYRP period[.]³⁶

³⁴ NCSEA Initial Comments at 2-3.

³⁵ *Id.* at 3.

³⁶ N.C. Gen. Stat. § 62-133(c)(1)a.

NCSEA reads this section of the statute as requiring a utility to obtain Commission authorization for capital spending prior to submitting its PBR Application. While NCSEA acknowledges that there is not currently an avenue for pre-approval of certain routine capital spend, NCSEA believes the statute is clear that the authorization sought is for the plan of the capital expenditures to be included in the MYRP. Notably, CIGFUR also reads House Bill 951 as requiring Commission authorization of capital expenditures *before* the filing of a PBR application.³⁷ Whether this authorization is through the Carbon Plan, an integrated resource plan, or some other planning portfolio docket, NCSEA is confident that the Commission and intervenors can blaze this new path to follow the requirement contained in statute. NCSEA believes that adopting Public Staff’s Proposed Schedule will satisfy the requirements of N.C. Gen. Stat. § 62-133(c)(1)a. for both DEP and DEC.

Relatedly, NCSEA agrees with CIGFUR’s proposal regarding PIMs deferring or displacing capital expenditures. Specifically, CIGFUR states:

CIGFUR recommends that the Commission consider establishing at least a few specific across-the-board benchmarks for any and all PIMs that the utility may propose: (1) the extent to which the utility is improving operational and cost efficiency; and (2) the extent to which PIM-related expenses defer or displace capital expenditures such that the utility would ostensibly be “indifferent to whether it meets customer and grid needs through rate-based traditional infrastructure, or through third-party owned DER.”³⁸

NCSEA agrees with this premise and thinks it will create value for ratepayers over time and utilize PIMs in a manner that will efficiently meet ratepayer needs. NCSEA also agrees with the *Synapse Report*, which asks the Commission to require a PBR Application to include documentation to show “the need for all capital projects, and, where appropriate,

³⁷ *CIGFUR Initial Comments* at 6-7.

³⁸ *Id.* at 13-14 (internal citation omitted).

reference the utility’s integrated resource plan, integrated distribution plan, or internal capital investment plan.”³⁹ The *Synapse Report* also smartly requires the utility “[e]valuate and document alternatives to the utility’s proposed investments, including solutions offered by third parties, where appropriate.”⁴⁰ Finally, the *Synapse Report* calls for the utility to make an annual filing comparing the differences between proposed and actual costs;⁴¹ NCSEA agrees with requiring this level of utility accountability.

NCSEA believes that Duke’s initial PBR Applications should not be filed before the Carbon Plan is finalized⁴² and that the pre-approval of capital expenditures is intended to integrate any DEP or DEC PBR application with the Carbon Plan, as was intended by House Bill 951, including ensuring investments are both least cost and further the carbon reduction goals in the statute. For all these reasons, NCSEA restates and reaffirms its position that any Duke PBR application not precede Commission consideration of the capital expenditures that Duke will seek to include in its PBR Application via the Carbon Plan.

2. TECHNICAL CONFERENCE PROCESS

As required by N.C. Gen. Stat. § 62-133.16(j)(3), the technical conference process established by the Commission rule must allow for the presentation of projected

³⁹ *Synapse Report* at 10.

⁴⁰ *Id.* at 10.

⁴¹ *Id.* at 11 (Utilities must “[m]ake an annual filing that identifies differences between projected investments and actuals, in both cost and quantity, and the reasons for any material deviations. In these filings, the utility should provide project status details for projects subject to an MYRP plan. These details should include the initial budget, the final cost, and the date each project was booked to plant in-service. In addition, for each of these projects, the Company should provide all Company project documents including, but not limited to, business cases, capital project expenditure applications, change order forms, project close out reports, and work orders.”).

⁴² House Bill 951 limits the Carbon Plan provision to utilities “serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2021”, so for the purposes of these Reply Comments any discussion of the Carbon Plan and its interaction with the new PBR rule is generally limited to DEP and DEC which are the only utilities that serve more than 150,000 North Carolina retail jurisdictional customers.

transmission and distribution expenditures and interested parties to provide comment and feedback.

As specified in the Joint Proposed Rule, the utility should be required to present details on its proposed investments, including detailed analysis of considered alternatives and the methodology underpinning any forecasted load-related investments.⁴³ While, in the interest of compromise, the Joint Proposed Rule does not require that the utility supply data showing how transmission and distribution expenditures are targeted to (1) achieve the Carbon Plan, and (2) support the ownership of solar generation by independent power producers, as well as (3) how the investments are informed by the ISOP process, and (4) how the investments address congestion relief on the grid as NCSEA had proposed in initial comments, NCSEA believes that consideration each of these four elements should weigh in the Commission's consideration of the evidence supporting a PBR application.⁴⁴ In order to have a meaningful opportunity to "provide comment and feedback" as required by the statute on the utility's projected expenditures plan, interested parties must be permitted to present their own information regarding projected transmission and distribution expenditures and to present critiques of the utility's presentation.

3. DEPRECIATION STUDY

Given that the N.C. Gen. Stat. § 62-133.16(c)(1)a. explicitly excludes from cost recovery via PBR any single new generation plant where the cost exceeds \$500 million, the investments being recovered via PBR are likely to be transmission and distribution investments with shorter depreciation cycles. The technologies for many of these investments are evolving quickly and may well change significantly between a utility's

⁴³ See, *CUCA Initial Comments* at 6; see, *Synapse Report* at 4, 14-15.

⁴⁴ *NCSEA Initial Comments* at 16.

PBR application and their subsequent PBR application. NCSEA has conferred with the Public Staff and understands that it intends to propose that each utility include a recent depreciation study with any PBR application. Given the nature of the investments for which cost recovery will occur via PBR, NCSEA believes that such a requirement is critical for the Commission to have the most up-to-date information about the depreciation of such assets. Given this, NCSEA supports the Public Staff's proposal to require a recent depreciation study with a PBR application.

D. TIMING OF RATE CASES

In its initial comments, NCSEA suggested that the Commission's rule implementing PBR make clear that Duke could not file a PBR application until the Commission has issued a final decision in its first Carbon Plan proceeding.⁴⁵ NCJC et al. suggested the same requirement, stating that "To ensure that any capital expenditures contemplated by the Companies in association with a multiyear rate plan application are not at cross-purposes with carbon reduction targets mandated by HB951, it would be reasonable and prudent for the Commission to require completion of the carbon plan under Part I of the HB951 before moving forward with consideration of such a MYRP."⁴⁶ NCJC et al. further argue that "It will be imperative that capital investments that are incorporated into a MYRP application be in harmony with—and not at cross-purposes with—the upcoming carbon plan."⁴⁷ While the Public Staff does not explicitly recommend the Commission require Duke wait until an order is issued in the first Carbon Plan proceeding to file a PBR application, they do cite the Carbon Plan as a reason for their proposal to

⁴⁵ NCSEA Initial Comments at 2-4.

⁴⁶ NCJC et al. Initial Comments at 24.

⁴⁷ Id. at 25.

require the utilities to stagger their PBR applications.⁴⁸ NCSEA continues to believe that the Commission’s decision in the initial carbon plan proceeding will inform, if not dictate, Duke’s proposed capital spending plan, and as such, NCSEA agrees with NCJC et al. that the Commission’s rules should require Duke’s first PBR application be filed after December 31, 2022.

NCJC et al. further argues that the Commission’s orders in Duke’s recent rate cases⁴⁹ require DEC and DEP to refrain from filing rate case applications until the Affordability Collaborative has completed its work.⁵⁰ While NCSEA agrees with and supports NCJC et al.’s policy rationale for asking the Commission to require Duke not to file a PBR application until the conclusion of the Affordability Collaborative, NCSEA also believes that NCJC et al. are correct that the Commission’s orders in Duke’s recent rate cases are clear that Duke is not to file a rate application until the conclusion of the Affordability Collaborative. As such, NCSEA supports NCJC’s request that “the Commission [] include in its PBR rules the requirement that no general rate case or multiyear application be submitted from Duke Energy Carolinas or Duke Energy Progress until the Commission has received the final report and recommendations of the Affordability Stakeholder working group.”⁵¹

⁴⁸ *Public Staff Initial Comments* at 6-7.

⁴⁹ *Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice*, Docket No. E-7, Sub 1214, at 176-179 (March 31, 2021); *Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Customer Notice*, Docket Nos. E-2, Sub 1219 & E-2, Sub 1193, at 186 (April 16, 2021).

⁵⁰ *See, NCJC et al. Initial Comments* at 4, 21, 23.

⁵¹ *Id.* at 21.

1. NO STACKING OR PANCAKING RATE CASES

In their respective initial comments, both the Public Staff and CIGFUR express concerns about parties being overwhelmed due to utilities “stacking” or “pancaking” rate case applications, that is to say, filing multiple rate cases in a very short period of time. The Public Staff writes that it “has found the workload excessive within the required timeframes when cases are ‘pancaked,’ and, as a result, other dockets were often delayed to prioritize the rate case investigation[.]” and that “A PBR rate case will require a more rigorous and resource intensive review than would a traditional rate case[.]”⁵² Similarly, CIGFUR “recommends that the Commission consider instituting a requirement that the applicable electric public utilities should, to the greatest possible extent, stagger their PBR application filings” given that “when taking into account that a general rate case with a PBR application will be large (in terms of total revenues at issue, total number of customers affected, and potential ratepayer impact), and is virtually guaranteed to involve a greater number of complex contested issues than a previous rate case heard under the traditional ratemaking paradigm codified at N.C. Gen. Stat. § 62-133.”⁵³

NCSEA concurs with CIGFUR that there is precedent for the Commission adopting such a timing requirement shown in Commission Rules R8-55(b) and (c).⁵⁴ NCSEA further notes that Commission Rules R8-67(e) (governing REPS rider proceedings), R8-69(e) (governing DSM/EE rider proceedings), R8-70(c) (governing joint agency asset rider proceedings), and R8-71(j) (governing CPRE rider proceedings) all adopt the timeline set forth in Commission Rules R8-55(b) and (c).

⁵² *Public Staff Initial Comments* at 5.

⁵³ *CIGFUR Initial Comments* at 9.

⁵⁴ *Id.* at 10-11.

The Public Staff's Proposed Schedule, not unlike the schedule set forth in Commission Rules R8-55(b) and (c), will avoid stacking or pancaking PBR applications among DEC, DEP and DENC. NCSEA has reviewed a draft of the Public Staff's Proposed Schedule and finds it to be appropriate and targeted to avoid overwhelming the Public Staff and intervenors. The Public Staff's Proposed Schedule also addresses NCSEA's concern that a PBR application by either DEC or DEP prior to the Commission's approval of the first Carbon Plan, as required by Section 1 of House Bill 951, could lead to a significant, and costly to ratepayers, disconnect between the capital investments proposed in the PBR application and those found to be appropriate in the Carbon Plan proceeding.

2. STAY-OUT REQUIREMENTS

In their initial comments, CUCA notes that the objectives of PBR "are accomplished largely through multi-year rate plans (MYRPs), which divorce a utility's revenues from its actual costs for a set period of time (the 'stay-out period' between rate cases)."⁵⁵ CUCA notes that the utility's "opportunity to enhance profits by reducing their costs between rate cases . . . is traditionally balanced by prohibiting the utility from filing another rate case if its costs exceed its revenues . . . [thus] historically assign[ing] more of the risk and reward associated with utility operations to utility management."⁵⁶ CUCA goes on to note that "The utility is allowed to file a rate case if its return on equity (ROE) falls below its allowed level. This provision renders the stay-out period moot and shifts risk to customers of any over-spend."⁵⁷

⁵⁵ *Synapse Report* at 1.

⁵⁶ *Id.* at 6.

⁵⁷ *Id.* at 5.

NCSEA both agrees and disagrees with CUCA's analysis. NCSEA concurs with CUCA's analysis of the landscape of PBR implementation and agrees that the stay-out period is a key in balancing the risks and rewards among ratepayers and utility shareholders. However, N.C. Gen. Stat. § 62-133.16(c)(1)c.1. states that "If the weather-normalized earnings fall below the authorized rate of return on equity, the electric public utility may file a rate case pursuant to G.S. 62-133." The statute clearly states that the utility may file a general rate case application pursuant to N.C. Gen. Stat. § 62-133 if they are underearning, but the statute declines to state that the utility may file a PBR application pursuant to N.C. Gen. Stat. § 62-133.16 during that period. Thus, NCSEA is supportive of the Public Staff's proposed Rule R8-__ (h) which prohibits the utility from filing a new PBR application pursuant to N.C. Gen. Stat. § 62-133.16 during the term of a MYRP, but allows the utility to file a general rate case application pursuant to N.C. Gen. Stat. § 62-133 during that time period.

E. FUEL COSTS

NCSEA has conferred with the Attorney General's Office and agrees that the Commission could shift some risk of fluctuating fuel costs to the utility by fixing the cost of fuel in the targets set in the PBR proceeding. NCSEA believes it is inconsistent to allow fluctuating fuel cost to be passed through directly to residential ratepayers during the pendency of a rate regime designed to incentivize managerial efficiency and share cost savings with ratepayers. NCSEA agrees with the Attorney General's Office that the Commission should include a fixed fuel price when it establishes the target revenue for the residential class. Any cost savings realized by the utility by reducing its fuel costs will be shared with ratepayers pursuant to the ESM, if applicable, or the decoupling adjustments.

F. DECOUPLING

N.C. Gen. Stat. § 62-133.16(c) requires that “A PBR application shall include a decoupling rate-making mechanism[.]” and N.C. Gen. Stat. § 62-133.16(a)(2) limits decoupling to residential customers. NCJC et al. provided the Commission with extensive comments about how collecting and/or refunding the decoupling adjustment could improve equity among the residential customer class. NCSEA also asked the Commission to consider how any decoupling adjustments would affect low-to-moderate income ratepayers and the equitability of rates among residential customers in its initial comments.⁵⁸ In addition to their comments, NCJC et al. also proposed a partial rule on decoupling. Portions of the NCJC et al. partial proposed rule have been incorporated into the Joint Proposed Rule. NCSEA believes that the additional information requested by NCJC et al. which is not incorporated in the Joint Proposed Rule is better suited for inclusion in the utility’s Form E-1 submission as opposed to the utility’s PBR application. As such, NCSEA requests that the Commission’s final order direct the utilities to include the decoupling mechanism information requested by NCJC et al. that is not included in the Joint Proposed Rule in their Form E-1 submission that accompanies any PBR application.

III. CONCLUSION

NCSEA respectfully requests that the Commission take these reply comments and the Joint Reply Comments into consideration when it adopts rules to implement N.C. Gen. Stat. § 62-133.16. NCSEA believes that the edits to the Public Staff’s proposed rule to implement PBR pursuant to N.C. Gen. Stat. § 62-133.16 set forth in the Joint Proposed Rule represent the most appropriate balance between utility and ratepayer interests, and

⁵⁸ *NCSEA Initial Comments* at 30.

requests that the Commission take the Joint Proposed Rule into consideration as it is finalizing its PBR rules.

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

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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Reply Comments by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 17th day of December 2021.

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