

**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)	SUPPLEMENTAL REPLY
Implement Performance-Based)	COMMENTS OF
Regulation of Electric Utilities)	THE PUBLIC STAFF

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and responds to the Commission's December 30, 2021 Order (Order) allowing supplemental reply comments on the issues detailed in paragraphs 13-15 of the Motion for Leave to File Supplemental Reply Comments filed by Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, (together Duke) on December 29, 2021 (Motion for Leave).

1. On October 13, 2021, Governor Cooper signed into law House Bill 951 (HB 951) as Session Law 2021-165 (S.L. 2021-165). General Statute § 62-133.16 (Statute), which comprises Part II of HB 951, authorizes the use of performance-based ratemaking (PBR) for electric public utilities and directs the Commission to adopt rules implementing PBR no later than 120 days after the effective date of S.L. 2021-165.

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

3. On November 9, the following parties filed initial comments: the North Carolina Retail Merchants Association; Duke; the Carolina Industrial Group for Fair Utility Rates I, II, and III (collectively, CIGFUR); Apple Inc., Meta Platforms, Inc., and Google LLC (collectively, Tech Customers); the North Carolina Sustainable Energy Association (NCSEA); the Carolina Utility Customers Association (CUCA); the City of Charlotte; the NC Justice Center (NCJC), NC Housing Coalition, Sierra Club, and Southern Alliance for Clean Energy (collectively, NCJC et al.); and the Public Staff. Dominion Energy North Carolina (Dominion) filed a letter in lieu of comments that, among other things, generally supported Duke's proposed rule.

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

5. On December 17, 2021, the following parties filed reply comments: Tech Customers, NCJC et al., CIGFUR, North Carolina Electric Membership Corporation, CUCA, NCSEA, the Attorney General's Office (AGO), Dominion, Duke, and the Public Staff. Joint reply comments were also filed by CIGFUR, CUCA, NCSEA, and NCJC et al. (Joint Intervenors).¹

¹ In addition, the City of Asheville filed a consumer statement of position on December 17, 2021.

6. In the Motion for Leave, Duke requested that Dominion and Duke (electric utilities) be permitted to file supplemental reply comments to address, among other things, what they assert to be new positions reflected in the reply comments filed by multiple parties. On that same date, Dominion filed a letter supporting the Motion for Leave.

7. On December 30, 2021, the Commission issued its Order Granting, in Part, the Motion for Leave, wherein it allowed not only the electric utilities, but all parties to the proceeding to file supplemental reply comments on issues raised in the reply comments of the Public Staff, AGO, and Joint Intervenors, as detailed in paragraphs 13-15 of the Motion for Leave.²

8. The Public Staff welcomes the Order and endorses the Commission's modification of the Motion to Leave therein to allow not only the electric utilities, but all parties to the proceeding to file supplemental reply comments to reply to the Public Staff's revisions to its proposed rule. This is only just, as no party has the burden of proof in this rulemaking proceeding. Neither Duke nor Dominion have any special status here that would allow only the electric utilities to file supplemental reply comments. As noted in CUCA's response to a similar Motion for Leave to File Supplemental Reply Comments in Docket No. E-100, Sub 177, "The efficiency of the regulatory process is undermined when a party

² These supplemental reply comments do not address Duke's specific arguments in paragraph 13 of the Motion for Leave as to issues Duke contends were newly raised in the Public Staff's reply comments and revised proposed rule as the Public Staff's December 17, 2021 filing speaks for itself.

insists on having the last word. If the Commission were to allow parties to file comments until all were satisfied their best arguments were exhausted, then the commenting process would never cease."³

9. The Public Staff takes issue with Duke's interpretation of the Order and its characterization of the purpose of the timing and substance of the Public Staff's limited refinements to its proposed rule. Duke asserts that the Commission's October 14, 2021 Order requesting comments did not contemplate that revised rules would be filed in the reply comment cycle.⁴ In fact, the Commission's Order was silent on whether a proposed rule could be submitted with reply comments. The Commission's Order was also silent as to whether a consultant's report could be attached to reply comments, yet Duke attached such a report. The Public Staff takes no issue with other parties submitting either proposed rules or consultant reports along with their comments, as all serve to inform the Commission in its adoption of PBR rules as required by the Statute.

10. Duke also wrongly insinuates that "parties wait[ed] until reply comments to introduce new legal arguments or policy positions that could have been raised during initial comments."⁵ The Public Staff notes that paragraph 7 of its Initial Comments, it stated:

Due to time constraints, the Public Staff has not had adequate opportunity to collaborate with other parties on its proposed rule. Between the filing of these comments and the filing of reply

³ <https://starw1.ncuc.net/NCUC/ViewFile.aspx?id=ff356a5e-a9bb-478f-aca9-3fefc6816f3b>

⁴ Motion for Leave ¶ 8.

⁵ Motion for Leave ¶ 7.

comments, the Public Staff will review other parties' comments and proposed rules, and hopes to engage other parties as time permits, in order to consider refinements to its proposed rule and develop additional comments.⁶

Further, in its Reply Comments, the Public Staff stated that "[i]n response to the initial comments filed in this docket, the Public Staff reviewed the initial comments of other parties and engaged in discussion with some of the parties."⁷ Based on the review of initial comments and proposed rules and discussions with parties, the Public Staff filed reply comments that included "refinements to its proposed rule", which the Public Staff's Initial Comments forecasted. In fact, the Public Staff engaged in discussions with Duke, among other parties, and made certain refinements to its initial proposed rule based on those discussions with Duke and the other parties. It is to the Commission's benefit, and ultimately to the benefit of the using and consuming public, that the Public Staff sought to discuss these issues with other parties and improve on its proposal based on parties' initial comments and these discussions. To the extent any new issues were raised, the issues arose based on the review of others' comments and discussions with other parties. Indeed, the Commission's order contemplated this. Had it not, stakeholder input would have been limited to the submission of initial comments and proposed rules. In response to the Commission's directives, the Public Staff has strived in the limited time allowed by the Statute to produce a proposed rule that lays out a detailed procedure for PBR, provides the Commission with tools to protect

⁶ Initial Comments of the Public Staff at 7.

⁷ Reply Comments of the Public Staff at 2.

ratepayers, and complies with the Statute. The insinuation that the Public Staff sought to game the process is baseless.

11. Additionally, the Public Staff believes the AGO and Joint Intervenors raise several valid points in their reply comments and requests that the Commission consider them in its implementation of the Statute and adoption of PBR rules. In regard to the AGO's reply comments, the Public Staff agrees with the AGO's contention that there must be coordination between Duke's filing for PBR and the adoption of the Carbon Plan. It would be a waste of resources for the Commission to approve capital spending projects in a Duke PBR application that are inconsistent with the subsequently approved Carbon Plan. The AGO also proposes a policy goal proceeding that would be similar to that the Public Staff proposed. The Public Staff addressed these issues in its reply comments.

12. The Joint Intervenors included in their proposed rule several filing requirements regarding the proposed capital spending projects that the Public Staff believes would assist the Commission and parties in evaluating these projects. The Joint Intervenors also included a number of provisions that mirror provisions in the Public Staff's revised proposed rule, i.e., the timeframe for filing a request for a technical conference, the requirement to file a new depreciation study, and provisions regarding the prudence review. The Public Staff has addressed these issues in its reply comments and appreciates the Joint Intervenors' inclusion of these provisions in their proposed rule.

The Public Staff respectfully requests that the Commission consider the foregoing Supplemental Reply Comments in its deliberations.

Respectfully submitted this the 5th day of January, 2022.

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CERTIFICATE OF SERVICE

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

This the 5th day January, 2022.

Electronically submitted
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