

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        )       REPLY COMMENTS OF CUCA  
Electric Utilities                                )

Carolina Utility Customers Association, Inc. (“CUCA”), by and through counsel, respectfully submits these reply 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).

**REPLY COMMENTS**

CUCA files these separate reply comments to highlight three issues. *First*, CUCA would like to emphasize that a broad coalition—CUCA, CIGFUR, NCSEA, the N.C. Justice Center, the N.C. Housing Coalition, the Sierra Club, and SACE—have joined together to draft PBR rules that safeguard stakeholder interests. *Second*, CUCA offers the final recommendations of Synapse Energy Economics, Inc. (“Synapse”), which responds to specific issues raised by other parties’ initial comments that resonate with and amplify Synapse’s initial report. *Third*, CUCA seeks to highlight that Section 62-133.16 forecloses Duke Energy’s request to transform a discrete multiyear rate plan into an eternal rate increase.

**I. The Commission should craft a PBR process that ensures stakeholders have an informed voice in the electricity rates they pay.**

CUCA wishes to emphasize that, although it was a stakeholder in the legislative process leading to the enactment of HB 951, it did not support the legislation and repeatedly expressed concerns regarding the PBR provisions of the bill. As confirmed by numerous non-utility commentators in this proceeding, the legislation's PBR structure is an anomaly—it uses the terminology of performance-based regulation but lacks common elements that balance the interests of the utility with its customers.

With this backdrop, CUCA is but one voice of a chorus of non-utility voices asking the Commission to reject Duke Energy's request to place ratepayer interests at the altar of administrative expediency. Duke Energy's goal to avoid certain burdens of rate cases comes at the unacceptable price of a utility's obligation to be transparent about its expenses and considerate of its customers' concerns. As revealed in the jointly proposed rule, a diverse group of stakeholders urges the Commission to adopt PBR rules that create utility transparency and opportunity for stakeholder involvement. These points are amplified and explained further in the initial report of Synapse submitted with CUCA's initial comments as well as Synapse's reply report submitted herewith.

**II. Synapse makes four ratepayer-friendly recommendations in response to the Initial Comments and proposed rules filed by others.**

Having reviewed the materials filed by other parties, Synapse tenders to the Commission a list of final recommendations for the contents of a PBR rule. Synapse offers four recommendations to supplement the comments made in its initial report:

- The Commission should improve the transparency of the utilities' planning processes and appoint an independent facilitator during planning processes;

- The Commission should clarify that Commission authorization to undertake capital investments outlined in a utility's PBR application does not constitute a prudence determination;
- The utilities' MYRP forecasts should be informed by the Commission's Carbon Plan, which must be developed by December 31, 2022. Thus, the Commission should not permit a PBR plan to be filed before January 1, 2023.
- Following the conclusion of the MYRP term, the Commission should ensure that the utility's ability to recover costs is balanced with customer protections. If MYRP rates are allowed to continue, so should customer protections. If customer protections are removed, rates should be established based on the general rate case using a historical test year approach not the MYRP adjustments.

These recommendations, which are detailed in the accompanying report prepared by Synapse, are informed by a review of multiyear rate planning in other jurisdictions. Because the contours of the PBR process set forth in N.C. Gen. Stat. § 62-133.16 lack many of the common elements of performance-based rates that encourage utilities to become more efficient, Synapse sees a great need for additional ratepayer protections in the Commission's rules.

### **III. Duke's proposed rule fundamentally misreads Section 62-133.16 with regards to the nature of MYRP rate increases.**

Duke Energy proposes that, upon conclusion of a multiyear rate plan ("MYRP"), the utility's third year rates from the MYRP should continue to be billed to ratepayers notwithstanding the expiration of the rate plan and the associated earnings protection. This interpretation runs counter to the language of Section 62-133.16 and would lead to fundamentally imbalanced results for ratepayers.

First, it is apparent from the language of Section 62-133.16 that the General Assembly intended, by establishing the MYRP mechanism, to provide an electric utility the opportunity to obtain immediate recovery for certain specified and approved capital expenditures through a special rate additive that would operate outside the normal rate-

setting processes. For this reason the MYRP is an additive to base rates and not a component of base rates.

Second, as the statute makes clear, every aspect of a PBR application should expire together at the end of its term. When a MYRP expires, rates should revert to amounts last approved through a general rate case. Allowing Duke Energy to extract one favorable piece to survive—the MYRP’s final third-year rates—is counter to the language of the statute and would be unfair to ratepayers.

CUCA concurs in the Joint Reply Comments of CIGFUR, CUCA, NCSEA, the N.C. Justice Center, the N.C. Housing Coalition, the Sierra Club, and SACE that are submitted contemporaneously herewith, with respect to this issue.

### **CONCLUSION**

CUCA respectfully requests that the Commission consider the foregoing Reply Comments and the final recommendations prepared by Synapse.

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

*/s/ Craig D. Schauer* \_\_\_\_\_  
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**Certificate of Service**

I hereby certify that a copy of the foregoing *Reply Comments of CUCA* has been served this day upon the parties of record in this proceeding by electronic mail.

This the 17th day of December, 2021.

BROOKS, PIERCE, McLENDON,  
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/s/ Craig D. Schauer