

**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)	INITIAL COMMENTS AND
Implement Performance-Based)	PROPOSED RULE OF THE
Regulation of Electric Utilities)	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 October 14, 2021 Order (Order) requesting comments and proposed rules to implement performance-based regulation (PBR) as authorized in N.C. Gen. Stat. § 62-133.16 (Statute). On October 13, 2021, Governor Cooper signed into law House Bill 951 (HB 951) as Session Law 2021 165 (S.L. 2021-165). Part II of HB 951 authorizes the use of PBR for electric public utilities. The Statute directs the Commission to adopt rules to implement PBR no later than 120 days after the effective date of S.L. 2021-165. The day after the enactment of S.L. 2021-165, the Commission issued the Order requesting comments regarding relevant issues the Commission should address to implement PBR, including the following specific issues as required by the Statute pursuant to N.C.G.S. § 62-133.16(j)(1)-(4):

1. The specific procedures and requirements that an electric public utility shall meet when requesting approval of a PBR application;

2. The criteria for Commission evaluation of a PBR application;
3. The parameters for a technical conference process to be conducted by the Commission prior to submission of any PBR application consisting of one or more public meetings at which the electric public utility presents information regarding projected transmission and distribution expenditures and interested parties are permitted to provide comment and feedback; and
4. The process by which an electric public utility may address the Commission's reasons for rejection of a PBR application, which process may include collaboration between stakeholders and the electric public utility to cure any identified deficiency in an electric public utility's PBR application.

In response to the Commission's Order, the Public Staff submits the following comments and proposed rule attached as Appendix A.

1. Section (e) of the Public Staff's proposed rule addresses the specific requirements that an electric public utility should meet when it requests approval of a PBR application. The Public Staff's proposed rule enumerates the items required for a PBR application, as well as delineates the items necessary for the Commission to consider the utility's proposed decoupling mechanism, performance incentive measures (PIMs), earnings sharing mechanism, and for each year of the multi-year rate plan (MYRP), the proposed base revenue

requirements, base rates, all riders related to the MYRP, and tracking metrics. Specifically, the Public Staff recommends that along with the information required to be included in the Form E-1, the utility should submit information necessary to review the proposed decoupling mechanism as listed in Section (e)(1), information to be considered in developing the rate adjusts in each year of the MYRP as set out in Sections (e)(2) and (3), and information necessary to consider the utility's proposed PIMs in section (e)(4). The Public Staff believes that each of these items is necessary for the Commission to determine whether an MYRP complies with the Statute and the Rule implementing PBR (PBR Rule), particularly subsection (d)(1) of the Statute.

The Public Staff also recommends the procedure for the consideration of a PBR application in Section (f) of its proposed rule. Beyond the procedural requirements set out in N.C.G.S. § 62-134, the Public Staff proposes a form of notice in section (f)(3).

2. Section (d) of the Statute sets out the criteria by which the Commission must evaluate a PBR application: that it would result in just and reasonable rates, is in the public interest, and meets the requirements of the Statute and the Commission's PBR Rule. Section (d)(1)(a-c) of the Statute also requires that the Commission consider in making its determination whether approval of the PBR application would result in no customer class being unreasonably harmed, fair rates to both the customers and the utility, continuation of safe and reliable service, no customer class being unreasonably prejudiced, and

no substantial increases or "rate shock." Section (d)(2) of the Statute also provides a list of policy objectives for the Commission to consider in evaluating the PBR application. Section (e)(3) of the Public Staff's proposed rule requires the utility to include in its PBR application details of how the application complies with the mandatory criteria in Section (d) of the Statute, as well as whether, and if so how, the application advances each of the policy objectives listed in Section (d)(2) of the Statute.

3. Section (d) of the Public Staff's proposed Rule sets out the parameters for the technical conference required by the Statute.

4. Section (g) of the Public Staff's proposed rule addresses the process for consideration of an application for PBR that has been rejected and refiled. Because the reason for rejection may require small changes that can be reviewed quickly, or substantial changes that would require an involved investigation, discovery, and hearing, the proposed rule allows the Commission to establish the appropriate timing for the consideration of the refiled application based on its specific circumstances.

5. Besides the sections of the Public Staff's proposed rule discussed above, the proposed rule also provides, among other things:

a. In section (b), the definitions incorporated in the Statute, as well as additional terms that the Public Staff believes should be defined.

b. In Section (c), a process for the Commission to periodically set policy goals that utilities would target in proposing their PIMs.

c. In Section (i), a procedure for notice in the case of cancellation or postponement of a capital spending project, as well as a requirement that the utility file a proposal for refund or adjustment of rates in the case of cancellation or postponement.

d. In Section (j), the filing requirements for and scope of the annual review, including evaluation of the decoupling mechanism and review of any proposed adjustments due to decoupling , review of earnings, review of the utility's achievement of approved PIMs, and the annual review procedure.

e. In Section (k), the proposed rule lists the items to be included in the utility's quarterly reports.

6. The Public Staff is concerned about the timing of PBR rate cases among the three investor-owned electric public utilities. In the past two Duke rate case cycles, when Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, filed rate cases within 30 to 60 days of one another, the Public Staff 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. A PBR rate case will require a more rigorous and resource intensive review than would a traditional rate case, particularly with the forward looking

element and the establishment of PIMs, but is required by the Statute to be decided in the same time frame as a traditional rate case. The annual review process for each utility's MYRP adds additional complexities.

S.L. 2021-165 enacted a new Carbon Reduction Plan to facilitate fuel transition and decommissioning of coal generation facilities. There will also be various rulemakings or other proceedings for customer programs along with the increasing number of CPCN applications filed at the Commission and potential new competitive resource procurements pursuant to the Carbon Reduction Plan. The Public Staff believes it is the best interest of the Commission, all parties, and ratepayers to provide adequate time for intervenors to review the filings and for the Public Staff to complete a thorough investigation in each rate case. To ensure administrative fairness and in the interest of protecting the ratepayer, the Public Staff proposes that each investor-owned electric public utility file its initial MYRP/PBR rate case in designated years in three year cycles. Each rate case, with the notice of technical conference and the suspension of rates, will likely take a year to complete from start to finish. If a case is filed every three years for a three-year MYRP, the Commission could align the utilities by requiring each file its MYRP rate case in a designated year, i.e., DEP files in October 2022, DEC files in October 2023, and DENC files in October 2024. This would also allow the Commission to schedule the required technical conference, evidentiary, and public hearings at a predictable time each year.

The Public Staff believes this schedule should be flexible and open to modification given the utilities' right to come in for a rate case if they are underearning, and, thus, should be set out in Commission order rather than in the MYRP/PBR rule and updated by the Commission by motion of any of the parties to this docket. The Public Staff believes the Commission has the authority to schedule the timing of proceedings, including the timing of an initial application, pursuant to the rulemaking provision N.C.G.S. § 62-133.16(j)(1). The utility would not be limited by this proposed schedule in its right to file an application for a traditional rate case pursuant to N.C.G.S. § 62-133.

7. 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 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.

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

PUBLIC STAFF
Christopher J. Ayers
Executive Director

Dianna W. Downey
Chief Counsel

Electronically submitted
/s/ Lucy E. Edmondson
Staff Attorney

4326 Mail Service Center
Raleigh, North Carolina 27699-4326
Telephone: (919) 733-0975
Email: lucy.edmondson@psncuc.nc.gov

CERTIFICATE OF SERVICE

I certify that a copy of these Comments and Proposed Rule 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 9th day November, 2021.

Electronically submitted
/s/ Lucy E. Edmondson
Staff Attorney

Rule R8-____. PERFORMANCE BASED RATEMAKING.

(a) Purpose. – The purpose of this rule is to establish procedures and guidelines for the implementation of performance-based regulation of electric public utilities consistent with N.C. Gen. Stat. § 62-133.16.

(b) Definitions. – As used in this rule:

- (1) "Capital Spending Project" means 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.
- (2) "Cost causation principle" means establishment of a causal link between a specific customer class, how that class uses the electric system, and costs incurred by the electric public utility for the provision of electric service.
- (3) "Decoupling ratemaking mechanism" means a ratemaking mechanism intended to break the link between an electric public utility's revenue and the level of consumption of electricity on a per customer basis by its residential customers.
- (4) "Distributed energy resource" or "DER" means a device or measure that produces electricity or reduces electricity consumption and is connected to the electric distribution system, either on the customer's premises or on the electric public utility's primary distribution system. For the purposes of G.S. § 62-133.16 and Rule R8-____, a DER may include any of the following: energy efficiency, distributed generation, demand response, microgrids, energy storage, energy management systems, and electric vehicles.

- (5) "Earnings sharing mechanism" means an annual ratemaking mechanism that shares surplus earnings between the electric public utility and customers over the period of time covered by a MYRP.
- (6) "Electric public utility" means an electric public utility as defined in G.S. § 62-3(23) that is subject to the Commission's jurisdiction.
- (7) "Multiyear rate plan" means a ratemaking 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.
- (8) "Performance incentive mechanism" or "PIM" means a ratemaking mechanism that links electric public utility revenue or earnings to electric public utility performance in targeted areas consistent with policy goals, as that term is defined by this Rule, approved by the Commission, and includes specific performance metrics and targets against which electric public utility performance is measured.
- (9) "Performance-based regulation" or "PBR" means an alternative ratemaking approach that includes decoupling, one or more performance incentive mechanisms, and a multiyear rate plan, including an earnings sharing mechanism, or such other alternative regulatory mechanisms as may be proposed by an electric public utility.
- (10) "Policy goal" means the expected or anticipated achievement of operational efficiency, cost-savings, or reliability of electric service that is greater than that which already is required by State or federal law or regulation, including standards the Commission has established by order prior to and independent of a PBR application, provided that, with respect to environmental standards, the Commission may not approve a policy goal that is more stringent than is established by (i) State law, (ii) federal law, (iii) the Environmental Management Commission pursuant to G.S. § 143B-282, or (iv) the United States Environmental Protection Agency.

- (11) "Rate year" means the year of the MYRP for which base rates, as established pursuant to G.S. § 62-133 and revised pursuant to G.S. § 62-133.16, are effective.
- (12) "Tracking metric" means a methodology for tracking and quantitatively measuring and monitoring outcomes or electric public utility performance.

(c) Adoption of Policy Goals for PBR

- (1) 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 MYRP may target.
- (2) Each proposed policy goal must be clearly defined, be measurable with a defined performance metric or set of metrics, entail a desired outcome, and be solely or primarily within the electric public utility's control. The proposed policy goal should indicate how it would address operational efficiency, cost-savings, or reliability of electric service beyond that which is already required by State or federal law or regulation, including standards the Commission has established by order prior to and independent of a PBR application.
- (3) Each recommended policy goal shall be accompanied by:
 - a. A clear statement defining and explaining the policy goal ;
 - b. an explanation as to why the goal is appropriate;
 - c. suggested metrics for measuring success in achieving the goal;
 - d. a timeline to achieve the policy goal. Any policy goal extending beyond one year must also include incremental annual achievement targets; and
 - e. supporting analyses, workpapers, modeling, and any other information needed to provide reasonable justification for implementing the policy goal.

- (4) Upon a showing of good cause by any party, or upon the Commission's own motion, policy goals may be reviewed at any time.

(d) Technical Conference

- (1) No later than 90 days before an electric public utility gives notice that it intends to file a general rate case that includes a PBR application, the electric public utility shall file a request with the Commission to initiate a technical conference regarding projected transmission and distribution expenditures, pursuant to G.S. § 62-133.16(j)(3).
- (2) Parties seeking to participate in a technical conference shall file a notice with the Commission no later than five days before the conference in a manner to be specified by the Commission in a procedural order setting the date(s) and time(s) of the public meeting(s).
- (3) At the public meeting(s), the electric public utility shall present the following information regarding projected transmission and distribution expenditures:
 - a. A comprehensive list of programs and major projects accompanied by, for each program and project, the purpose , (i.e., capacity increase or reliability), a timeline for construction ,, cost-benefit analyses; and any other information , justifying each program and project;
 - b. An explanation of the need for the proposed transmission and distribution expenditures and how the overall proposal advances system efficiency, reliability, or is necessary to comply with applicable federal operational or design requirements; and
 - c. The projected costs of each program and project.
- (4) Subject to the Commission's scheduling order, interested parties will have an opportunity to provide both comment and feedback as specified by the Commission.

(e) PBR Application. – An electric public utility seeking approval of PBR:

- (1) Shall file, along with its application for a general rate increase pursuant to G.S. § 62-133 and Commission Rule R1-17, a proposed decoupling ratemaking mechanism that includes the following:
 - a. The applicable residential rate schedules and riders eligible to be affected by the decoupling.
 - b. The proposed target annual revenue requirement per residential customer unit for each rate year, with weather normalization, along with the utility's underlying assumptions, calculations, and methodology.
 - c. Proposed distribution of the weather normalized per residential revenue requirement for each month in each rate year, along with the utility's underlying assumptions, calculations, and methodology.
 - d. The projected number of residential customers for each rate year, along with the projected number of residential customers for each month of each rate year, or some calculation or methodology for determining the projected number of residential customers for each month.
 - e. The proposed method for calculating and deferring differences realized between the estimated and actual revenue per customer.
 - f. Electric Vehicle (EV) Sales and Rates
 - i. A method for distinguishing kWh sales associated with EVs and the residential class as a whole and an explanation of how those EV sales will be treated.
 - ii. EV rate schedules or riders that have been excluded from the mechanism, along with the projected number of EV customers and kWh for each month of each rate year, along with the utility's underlying assumptions, calculations, and methodology.
- (2) Shall file, along with its application for a general rate increase pursuant to G.S. § 62-133 and Commission Rule R1-17, an application for a MYRP that includes the following:

- a. A concise, plain statement of the changes in base rates and the time when the change in rates will go into effect with schedules for each rate year of the MYRP in the same manner required pursuant to G.S. § 62-134(a).
- b. A forecast of the weather normalized revenues and costs for each rate year of the MYRP, including operating revenues other than those from the sale of electricity, base fuel expenses, other operation and maintenance expenses, depreciation and amortization expenses, property taxes, taxes other than income taxes, state and federal income taxes, deferred income taxes, and any other operating revenues and operating revenue deductions, all accompanied by detailed workpapers supporting each of these revenues and costs.
- c. A forecast of the required overall return, return on common equity (or its equivalent), and revenue requirement for each rate year of the MYRP, including the required capital structure; cost of long-term debt; required rate of return on common equity (or its equivalent); rate base investment, including but not limited to plant in service (including the allowance for funds used during construction), construction work in progress proposed to be included in rate base, nuclear fuel inventory, accumulated depreciation, accumulated amortization of nuclear fuel inventory, other fuel inventory, materials and supplies inventory, cash working capital, other working capital, operating reserves, and other debits and credits to rate base (including all regulatory assets and liabilities); all accompanied by detailed workpapers supporting each of these items.
- d. A forecast, for each year of the MYRP, of the kWh sales, kilowatt (kW) load (coincident peak demand, non-coincident peak demand), electric vehicle kWh sales, and the number of expected customers, with weather normalization, all accompanied by detailed workpapers supporting each of these items.
- e. The electric public utility's forecasting methodology used for each of its forecasts, including its forecasts for all

costs, energy sales, peak demand, and number of expected customers for each year of the MYRP.

- f. A detailed description of and detailed workpapers supporting all adjustments increasing or decreasing, for each year of the MYRP, operating revenue deductions and capital expenditures above or below the amounts proposed for the general rate case in accordance with G.S. § 62-133.
- g. A detailed description of and detailed workpapers supporting all expected and reasonably estimable reductions in operating revenue deductions and rate base expected in each of the annual MYRP rate periods, and an explanation of whether and, if so, why any of these has been excluded from the calculated revenue requirements for each rate period. Such reductions shall include, but not be limited to, decreases in net plant in service due to retirements of utility plant; increases in accumulated depreciation due to continued depreciation of test year plant in service; increases or decreases in rate base due to continued amortization of test year deferred debits and credits (including regulatory assets and liabilities); decreases in depreciation expense due to retirement of test year plant in service; and other known and reasonably estimable changes.
- h. A detailed description of and detailed workpapers supporting any operating revenue deductions normalized for ratemaking purposes pursuant to G.S. § 62-133 for which the annual MYRP amounts are proposed to differ from the normalized test year amounts.
- i. Detailed workpapers setting forth the calculations of state and federal current and deferred income tax expense for each year of the MYRP period.
- j. A fully adjusted jurisdictional and class cost of service study that includes:
 - i. Total electric cost of service and rates of return on rate base under present rates per books, present rates

- annualized, and proposed rates for each year of a MYRP annualized;
- ii. Functionalization and classification of all revenues, rate base, and expenses related to the base year and each subsequent year of a MYRP;
 - iii. A unit cost study for the base year and each subsequent year of a MYRP; and,
 - iv. Jurisdictional and customer class allocation factors and accompanying workpapers.
- k. The electric public utility's financing plan for the Capital Spending Projects for each year of the MYRP.
- l. Projected costs (including the ranges and degrees of precision of the costs) and related workpapers associated with the proposed known and measurable set of Capital Spending Projects for each rate year of the MYRP, including:
- i. The reason for each Capital Spending Project,
 - ii. The scope of each Capital Spending Project,
 - iii. The timing of each Capital Spending Project,
 - iv. The depreciation life of each Capital Spending Project by year,
 - v. Changes expected in the depreciable life of each Capital Spending Project for two years after the conclusion of the MYRP, and
 - vi. The impacts on operating expenses related to the construction, and placement into service, of the Capital Spending Projects.
- m. A detailed statement indicating which projected, incremental Capital Spending Projects are not included in the proposed MYRP and why.

- n. Projected operating benefits associated with the Capital Spending Projects to be placed in service during each rate year of the MYRP, including the methodology, modeling, or other analyses used to determine the projected operating benefits.
- o. Projected depreciation of rate base associated with the Capital Spending Projects during each rate year of the MYRP period.
- p. A reconciliation, accompanied by detailed workpapers, of the capital expenditures and expenses associated with the Capital Spending Projects set forth in response to subsection l above with the increases in annual expenses and capital investments set forth in subsections b and c above.
- q. A proposed earnings sharing mechanism that provides for the refund of any annual revenues collected from the ratepayers associated with weather normalized earnings 50 basis points or more above the Commission authorized rate of return on equity to customers approved pursuant to G.S. § 62-133, pursuant to G.S. § 62-133.16(c)(1)c.1. At a minimum, the application should include the following:
 - i. The projected, weather normalized earnings for each rate year.
 - ii. The electric public utility's weather normalization methodology, along with all underlying assumptions and calculations.
 - iii. Proposed revenue requirements for each rate year of the MYRP.
- r. Base rates for each of the years that a MYRP is in effect or a method for calculating the same, accompanied by exhibits that illustrate base rate changes (exclusive of all riders applicable to the electric public utility's service), and workpapers similar in form to those provided for the general rate case pursuant to G.S. § 62-133, with exhibits including the base revenues and associated

rates for the NC retail jurisdiction, each customer class and rate schedule:

- i. Present base rates and revenues, annualized for the end of the test year period;
 - ii. Proposed base rates and revenues, annualized for the end of the test year; and,
 - iii. Proposed base rates and revenues pro forma for each year of the MYRP.
 - s. A proposed allocation of the electric public utility's total revenue requirement among customer classes based upon the cost causation principle, including the use of minimum system methodology by an electric public utility that allocates distribution costs between customer classes, except for the setting of a basic facilities charge. Interclass subsidization of ratepayers should be minimized to the greatest extent practicable by the conclusion of the MYRP period.
- (3) Shall file, as part of its PBR Application, testimony and exhibits that include:
 - a. An analysis of the impact of the proposed MYRP, that demonstrates that it would, if approved:
 - i. Assure that no customer or class of customers is unreasonably harmed;
 - ii. Assure that the rates are fair both to the electric public utility and to each customer class so that they do not create any undue subsidy of any one customer class by another;
 - iii. Reasonably assure the continuation of safe and reliable electric service;
 - iv. Not unreasonably prejudice any class of electric customers, and;
 - v. Not result in sudden substantial rate increases or "rate shock" to customers.

- b. Discussion and analysis of whether the proposed MYRP addresses any of the objectives listed in G.S. § 62-133.16(d)(2).
 - c. Discussion, analysis, and quantification of any increased or decreased risk to either the electric public utility or its ratepayers, including quality of service, revenue requirements, rate impacts experienced by customers, or credit metrics, which may result from having an approved MYRP.
 - d. A process for adjusting rates to be charged during the MYRP period, and refunding revenues for estimated costs if already collected, for the costs of any planned investment if not completed or canceled, or if it became prudent to delay or avoid making the investment.
- (4) One or more clearly defined PIMs that include:
- a. Identification of one or more policy goals adopted by the Commission pursuant to R8-__ (c)(2) or (3) that the PIM targets;
 - b. A detailed explanation of how the proposed PIM supports or advances the policy goal(s);
 - c. An estimate of the impact to annual and total revenue requirements (NC retail jurisdiction and customer classes) that would result from implementation of the policy goal;
 - d. Identifiable and measurable metrics that will be used to assess compliance, including but not limited to projections of costs to be incurred, along with information on how the electric public utility intends to evaluate, measure, and verify compliance or achievement, and the proposed resources (labor, contractors, materials, etc.) the electric public utility plans to use to implement the policy goal;
 - e. A penalty to be refunded to and a reward to be collected from customers accompanied by one or more of the following:

- i. An explanation of how any savings achieved by meeting or exceeding a specific policy goal will be shared with customers.
 - ii. A proposal for differentiated authorized rates of return on common equity to encourage utility investments or operational changes to meet a specific policy goal; or
 - iii. Proposed fixed financial rewards or penalties based on achievement of specific policy goals. To the extent possible, the proposed PIMs should reward or penalize the electric public utility for achieving specific outcomes.
 - iv. A detailed explanation of:
 - a) how the proposed penalty or reward will minimize any duplication of other rewards or penalties created by other ratemaking mechanisms authorized by statute or Commission rule, and
 - b) how the electric public utility will distinguish the achievements that are rewarded through the incentives earned by the utility related to its DSM/EE portfolio approved pursuant to Rules R8-68 and 8-69 from those that it proposes to be measured for purposes of any performance incentive pursuant to § 62-133.16.
- (5) The electric public utility may include in its application:
- a. Proposed tracking metrics with or without targets or benchmarks to measure electric public utility achievement.
 - b. A proposed other alternative regulatory mechanism with an explanation in sufficient detail of the proposed mechanism, the nature, scope, and quantity of costs the proposed mechanism would cover, the policy objectives the proposed mechanism would help support or advance, why those policy objectives would not be supported or advanced as effectively by traditional cost

of service regulation, a decoupling ratemaking mechanism as defined by G.S. § 62-133.16(a)(2), a MYRP as defined by as defined by G.S. § 62-133.16(a)(5), or PIMs as defined by NG.S. § 62-133.16(a)(6), the duration of the proposed mechanism, how and when cost recovery would occur and be subject to review, and how the proposed mechanism would result in just and reasonable rates, promote the public interest, and be consistent with criteria established in G.S. § 62-133.16 and Rule R8-____.

- (6) The utility's application shall include a statement acknowledging that any true-up that is associated with any aspect of the PBR application that occurs after the end of an annual MYRP rate period will not constitute retroactive ratemaking.
- (f) Procedure Upon the Filing of a General Rate Case That Includes a PBR Application
- (1) The electric public utility shall not make any changes in any rate or implement any component of its PBR application except upon 30 days' notice to the Commission.
 - (2) The Commission, on its own motion or at the request of the Commission Staff, Public Staff, or any party of interest in the PBR application proceeding or related general rate case proceeding, shall review the PBR application within 15 days after such filing and notify the applicant by letter of any additional information needed to complete the PBR application under Rule R8-____. The process for addressing and remedying any deficiencies in the PBR application will be consistent with the process set forth in Rule R1-17(f).
 - (3) An electric public utility shall provide notice of the pending PBR application to the same extent as provided in G.S. § 62-134(a). The notice shall include the following statement:

Performance Based Regulation

This filing also includes a request for approval of a Performance Based Regulation (PBR) application pursuant to G.S. § 62-133.16 and Commission Rule R8-____. Specifically, the application includes (1) a Multiyear Rate Plan, which would allow the Company to collect base rates for a multiyear period no greater than 36 months; (2) an Earnings Sharing

Mechanism that would require a refund to customers of surplus earnings over a certain threshold over the multiyear period; (3) a Decoupling Ratemaking Mechanism that would allow the Company to refund or collect amounts based on any difference between actual and projected residential customer revenues; and (4) one or more Performance Incentive Mechanisms that would penalize or reward the Company based on its achievement of Commission approved policy goals. [if the PBR application contains other alternative regulatory mechanisms, the notice must include a short, plain statement explaining those proposed mechanism(s)].

In this PBR application, the Company has requested that the Commission allow it to recover total service revenues of \$_____ in year one, \$_____ in year two, and \$_____ in year three. If the PBR application is approved, the average monthly electric bill for a typical residential customer (based upon monthly electric usage of _____ kWh/kW) would be \$_____ in year one, \$_____ in year two, and \$_____ in year three.

- (4) The Commission will suspend the effect of the proposed base rates and PBR implementation pending investigation in the same manner as provided in G.S. § 62-134(b), but no longer than 300 days;
- (5) The Commission will, upon reasonable notice, conduct a hearing concerning the lawfulness of the proposed base rates and the PBR application in the same manner as provided in G.S. § 62-134(b).
- (6) The Commission shall consider such relevant, material, and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues, or the cost of the electric public utility's property used and useful in the MYRP rate years, in providing the service rendered to the public within this State, including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is closed.
- (7) The burden of proof as to whether the PBR application would result in just and reasonable rates, is in the public interest, and is consistent with the criteria established in G.S. 62-133.16 and Commission Rule R8-____ shall be on the electric public utility.

(g) Review of Refiled PBR Application

- (1) If the Commission issues a final order rejecting a PBR application and an electric public utility wishes to refile its PBR Application, the electric utility must give notice of its intent to refile no later than 10 days after the Commission's order becomes final, and refile its PBR application within 30 days of such notice.
 - (2) Upon the refiling of a PBR application that has been rejected by the Commission, the same requirements, timelines, and procedures as set out for the filing of a general rate case that includes a PBR Application will apply; however, based on the type, number, and complexity of the deficiencies addressed in the refiled application, as well as changes in circumstances since the original filing, the Commission may abbreviate the schedule as appropriate. The Commission-approved, base rates will be in effect for the pendency of the refiling process.
- (h) An electric public utility may not file a general rate case application for rates to be effective during the term of its multiyear rate plan except as permitted by G.S. § 62-133.16(c)(1) and (e).
- (i) Cancellation or Postponement of Capital Spending Projects; No Substitution
- (1) If a Capital Spending Project included in a multiyear rate plan is canceled or postponed, within 30 days of its cancellation or postponement, the electric public utility must 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 in the MYRP rate period.
 - (2) If the electric public utility makes some other 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 change, any changes to the projected costs, scope, or timing of the project.
 - (3) The electric public utility shall not substitute one or more Capital Spending Projects for an already Commission-approved Capital Spending Project without Commission approval.
- (j) Annual Review of PBR Results: Decoupling, MYRP Earnings Sharing, and PIMS

(1) Decoupling Mechanism: The Commission shall annually evaluate the decoupling rate-making mechanism established as part of the PBR plan, and set rates to refund or collect, as applicable and after Commission review, the balance in the deferred regulatory asset or liability account established pursuant to G.S. § 62-133.16(c)(2) to or from residential customers through billing factors established by the Commission.

a. The utility shall file with the Commission, for the preceding MYRP rate year:

- i. The final applicable residential rate schedules and riders eligible to be affected by the decoupling.
- ii. The finalized proposed target annual revenue requirement per residential customer unit for the preceding rate year, with weather normalization, along with the utility's underlying assumptions, calculations, and methodology.
- iii. The proposed distribution of the weather normalized per residential revenue requirement for each month in the preceding rate year, along with the utility's underlying assumptions, calculations, and methodology.
- iv. The number of residential customers for the preceding rate year, along with the number of residential customers for each month of the preceding rate year, or calculation or methodology for determining the projected number of residential customers for each month. If different from the number of customers identified in section (e)(1) d. above, an explanation of the difference.
- v. The calculation of the total deferred differences between the estimated

and actual revenue per customer, and the proposed billing factor(s) to collect or refund the deferred differences, along with detailed supporting workpapers.

- vi. A method for distinguishing kWh sales associated with EVs and the residential class as a whole and an explanation of how those EV sales will be treated; and EV rate schedules or riders that have been excluded from the mechanism, along with the projected number of EV customers and kWh for each month of each rate year, along with the utility's underlying assumptions, calculations, and methodology.

(2) MYRP Earnings Sharing:

- a. The Commission shall annually review an electric public utility's earnings, as adjusted to take into account the criteria imposed on the MYRP for that year, to ensure the utility is not earning in excess of its allowable return on equity for reasonable and prudent costs, as adjusted, to provide service. For purposes of measuring an electric public utility's earnings under any mechanisms, plans, or settlements approved under this section, the utility shall make an annual filing that sets forth the utility's earned return on equity for the prior MYRP Rate Year, with appropriate adjustments.
- b. The utility shall file a comparison of the estimated and actual costs and revenues each year of the plan, as well as an explanation of the reasons for the variances.
- c. The utility shall also file an analysis of the historical accuracy of the utility's short-term, medium-term, and long-term forecasts.
- d. The utility shall file the actual information for the MYRP period corresponding to the estimated or forecasted

amounts provided for the estimated period pursuant to section (e)(2) of this Rule.

- e. For purposes of determining whether and to what extent an electric public utility's actual or pro forma earned return on equity falls below the low-end range or exceeds the high-end range of the authorized return band that is approved by the Commission, the only capital cost and expense increases considered, unless the Commission explicitly allows otherwise, shall be the reasonable and prudently incurred capital costs and expenses associated with Capital Spending Projects. The earned return on equity shall be calculated based on the capital structure and cost of debt, preferred stock, and other applicable sources of capital established in the general rate case.
- f. A comparison of its actual and pro forma capital investment costs, expenses, revenues, capital structure, and rate of return on equity, as described in Subsections (b) and (e) above, to those contained in the MYRP as approved by the Commission.
- g. A list of Capital Spending Projects that were canceled or postponed.
- h. A proposal to adjust rates to stop collecting any costs related to canceled or postponed Capital Spending Projects and refund to customers any costs already collected, unless such proposal has previously been resolved by the Commission.
- i. A statement that the utility's earnings during the subject year of the MYRP, as appropriately adjusted, fell within, exceeded the high-end, or fell below the low-end of the band of authorized returns established by the Commission. If the utility contends that its earnings fell below the low-end of the band of authorized returns established by the Commission, the utility shall also state whether it intends to file a general rate case as allowed by G.S. § 62-133.16.

- j. The calculation of the billing factors for any proposed refunds to customers of surplus earnings.
 - k. Detailed workpapers and supporting documentation for each of the above items.
- (3) PIMs - The utility shall file the calculations of all increment and decrement billing factors associated with the PIMS approved by the Commission for the MYRP rate period, and provide all workpapers and supporting documentation verifying and supporting the results of the metrics used to quantify the PIMs' results.
- (4) Overall PBR rate year rider(s) – The utility shall file the calculation of the combined increment or decrement PBR true-up rider(s) for each rate schedule, consisting of the decoupling, earnings sharing, and PIMs' increment or decrement billing factors, along with any applicable rate adjustments associated with canceled or postponed projects. The calculations shall be accompanied by all applicable detailed workpapers and supporting documentation.
- (5) Audit and Reconciliation. – The MYRP shall be subject to the following:
- a. Upon issuance of a Commission Order scheduling a public hearing on the utility's MYRP and report, the utility shall provide timely notice to customers as required by the Commission. The public hearing may be subject to cancelation if no significant protests are received.
 - b. The Public Staff shall audit the utility's filing and shall make a filing detailing its findings and recommendations no later than six months after the end of each year of the MYRP Period of the utility.
 - c. When determining the utility's earned rate of return on equity, the Commission may consider pro forma adjustments to the utility's per books capital expenditures, expenses, revenues, capital structure, and embedded cost rates for long-term debt, preferred stock, or other sources of capital.

- d. The Commission shall issue an order addressing its findings and making effective any reconciliation or adjustment to the MYRP it deems appropriate no later than ten months after the end of each year of the MYRP Period. Any reconciliation or adjustment to the MYRP ordered by the Commission, including any refund or credit to customers of excess earnings above the high end of the banding of authorized returns established by the Commission, shall be effective beginning 12 months after the conclusion of the preceding year of the MYRP Period.
 - e. The Commission shall issue an order addressing its findings and making effective any reconciliation or adjustment to the MYRP it deems appropriate no later than ten months after the end of each year of the MYRP Period. Any reconciliation or adjustment to the MYRP ordered by the Commission, including any refund or credit to customers of excess earnings above the high end of the banding of authorized returns established by the Commission, shall be effective beginning 12 months after the conclusion of the preceding year of the MYRP Period.
 - f. If the Commission concludes that the utility's earnings fell below the low-end of the band of authorized returns established by the Commission, and the utility provided notice of its intent to file a general rate case pursuant to subsection (j)(2)i of this section, following the current year of the MYRP, rates will continue at the level set for the current MYRP rate year pending the outcome of the next general rate case.
- (k) Reporting Requirements. – The utility shall make filings addressing each three-month period within the MYRP Period. The first filing shall be made no later than 45 days after the first three-month period, and subsequent reports shall be made every three months thereafter. Each filing shall contain the following:
- (1) An earnings report consisting of the following:
 - a. A balance sheet and income statement for the three months and twelve months to date for the utility;

- b. A statement of the per books net operating income for the three months and twelve months to date for each rate division of the utility based on North Carolina ratemaking;
- c. A statement of rate base at the end of the three months for each rate division of the utility based on North Carolina ratemaking;
- d. The number of customers, kWh sold, and service revenue for the three months for each rate division by rate type;
- e. A balance sheet and income statement for the three months and twelve months to date for the utility;
- f. A statement of the per books net operating income for the three months and twelve months to date for each rate class of the utility based on North Carolina ratemaking;
- g. A statement of rate base at the end of the three months for each rate class of the utility based on North Carolina ratemaking;
- h. The number of customers, kWh and kW sales, and service revenue for the three months for each rate class by rate schedule;
- i. A report of refunds or credits disbursed to customers during the three months by rate class by rate schedule; and
- j. A construction status report which includes by rate class and rate schedule the following information for each Capital Spending Project:
 - i. The costs incurred during the three months;
 - ii. The cumulative amount incurred;
 - iii. The estimated total cost;
 - iv. The completion date estimated in the MYRP; and

- v. The actual completion date or, if not complete, the current estimated completion date.

- (l) Burden of Proof. – The burden of proof as to whether a MYRP mechanism is in the public interest, the correctness and reasonableness of any MYRP, including the planned rate adjustments, Capital Spending Projects, and forecasted expenses, and whether the capital investment and expenses were reasonable and prudently incurred shall be on the utility as provided in N.C.G.S. §§ 62-75 and 62-134.

- (m) Commission Review. – At any time prior to expiration of a PBR plan period, the Commission, with good cause and upon its own motion or petition by the Public Staff, may examine the reasonableness of the electric public utility's rates under the plan, conduct reviews of and hearings on the plan, or adjust base rates or PIMs.

- (n) 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.