

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 178

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:  
Rulemaking Proceeding to Implement  
Performance-Based Regulation of  
Electric Utilities

JOINT REPLY COMMENTS OF  
CIGFUR, CUCA, NCSEA,  
NC JUSTICE CENTER,  
NC HOUSING COALITION,  
SIERRA CLUB, AND SACE

NOW COME the Carolina Industrial Group for Fair Utility Rates I, II, and III (CIGFUR), the Carolina Utility Customers Association, Inc. (CUCA), the North Carolina Sustainable Energy Association (NCSEA), the North Carolina Justice Center (NC Justice Center), North Carolina Housing Coalition (NC Housing Coalition), the Sierra Club, and the Southern Alliance for Clean Energy (together with the NC Justice Center, NC Housing Coalition, and Sierra Club, NCJC et al.) (collectively, Joint Intervenors), pursuant to the Commission's October 14, 2021 Order Requesting Comments and Proposed Rules and its November 24, 2021 Order Granting Extension, and respectfully offer the following joint reply comments and proposed rule in the above-captioned docket.

**Background**

Joint Intervenors represent a diverse group of stakeholders with broad, often divergent, interests. Joint Intervenors devoted a significant amount of time and resources for the purpose of collaborating with one another toward compromise positions on various contested issues in this docket. The fruits of this collective labor are reflected in edits to the Public Staff's proposed rule as filed in its initial comments, which Joint Intervenors believe provided a strong foundation upon which Joint Intervenors endeavored to build.

To that end, attached to these comments are Joint Intervenors' edits to the Public Staff's proposed performance-based regulation (PBR) rules, a redlined copy of which is identified as Appendix A to these comments and a clean copy of which is identified as Appendix B to these comments.

Joint Intervenors note that while they collectively support these reply comments and the proposed edits contained in Appendices A and B to these reply comments, the issues addressed in Joint Intervenors' edits do not reflect an exhaustive list of issues about which respective Joint Intervenors, individually and separately, may wish to take a position. To that end, CIGFUR, CUCA, NCSEA, and NCJC et al. each intend to file, independently and separately from other Joint Intervenors, additional reply comments that may expand upon issues raised in Joint Intervenors' reply comments or raise different issues not addressed in Joint Intervenors' reply comments.

Joint Intervenors reiterate that they used the Public Staff's proposed PBR rule, as filed in the Public Staff's initial comments, as the starting point from which to edit. Joint Intervenors further note that they also incorporated some of the Public Staff's own revisions to its PBR rule, as reflected in the Public Staff's reply comments. Joint Intervenors appreciated the opportunity to share their proposed redlined PBR rule edits with the Public Staff, and likewise that the Public Staff shared its own revisions to its proposed PBR Rule with Joint Intervenors in advance of this filing. While not completely aligned, Joint Intervenors believe their proposed PBR rules are closely aligned with the revised proposed PBR rules filed by the Public Staff in reply comments.

Although Joint Intervenors worked diligently to find common ground among many differing positions before the deadline for filing reply comments in this docket, some issues

remain partially or completely unresolved. Joint Intervenors believe there are additional areas of compromise that could have been explored—potentially with an expanded pool of stakeholders—given more time. For this reason, Joint Intervenors may seek the opportunity to file sur-reply and/or supplemental comments if it appears from the comments of other parties that further attempts at collaboration might prove to be constructive and productive.

### **Effective Rates upon Expiration of Performance-Based Regulation (PBR) Period**

Joint Intervenors jointly wish to address an important issue that remains in dispute with certain other stakeholders concerning the rates that should be in effect upon the expiration of the PBR plan period pursuant to N.C. Gen. Stat. § 62-133.16(f). Given that this particular issue presents a novel issue of law involving the construction of a newly-enacted statute, Joint Intervenors respectfully suggest that the Commission may wish to request supplemental briefing on this limited issue. Alternatively, Joint Intervenors suggest that because it is not essential to address this issue in the PBR rules adopted by the Commission and, as a practical matter, this issue will not occur for at least three years, the Commission need not resolve this issue before February 10, 2022 but could resolve this issue sometime in the near future after adopting rules. For now, however, Joint Intervenors endeavor to address certain aspects of this complex regulatory and legal issue in these joint reply comments, as follows:

**I. Section 62-133.16 does not authorize the approval of rates beyond the third year.**

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (together, Duke) propose that, upon conclusion of a multi-year rate plan (MYRP), the utility's third-year MYRP rates should continue in perpetuity. This interpretation runs counter to the language set forth in N.C. Gen. Stat. § 62-133.16 and would lead to fundamentally imbalanced

results for ratepayers. As the statute makes clear, every aspect of a PBR application should expire together at the end of the maximum 36-month term. Accordingly, under the statutory construct envisioned by the North Carolina General Assembly, the third-year MYRP rates should revert to traditional cost of service rates approved by the Commission in the same general rate case order approving the expiring PBR application when an MYRP expires.<sup>1</sup>

The statute conceptualizes a PBR application as a single indivisible unit comprised of three elements: (1) a decoupling rate-making mechanism, (2) one or more performance incentive mechanism (PIMs), and (3) an MYRP, and any PBR application must include this triumvirate of PBR rate elements.<sup>2</sup> Further, “[a]ny PBR application approved . . . shall remain in effect for a plan period of not more than 36 months.”<sup>3</sup> In other words, the entire approved application survives *as a unit* for up to three years, at which time it expires *as a unit*. Nothing in the statute contemplates or permits the Commission to separate these elements or otherwise allow one element to survive while the others expire. The approved MYRP rates must expire along with the rest of the PBR application.

It is also worth noting that the report prepared upon the culmination of the 2020 North Carolina Energy Regulatory Process (NERP) also did not contemplate that third-year MYRP rates would continue in perpetuity beyond the temporal limits established for the MYRP period:

*The term of the MYRP*

NERP recommends using a maximum of three years as the term of an initial MYRP, but this is a key term to be decided. While most MYRPs are 3-5 years, NERP recommends

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<sup>1</sup> Under the first step of N.C. Gen. Stat. § 62-133.16(c)(1)(a), the Commission is directed to set rates in the manner prescribed under G.S. § 62-133 before considering any additions for years one, two, or three, and it is those recent base rates that go into effect following the expiration of the 36-month MYRP period.

<sup>2</sup> See N.C. Gen. Stat. § 62-133.16(c).

<sup>3</sup> *Id.* at § 62-133.16(f).

starting on the shorter end of this range until more experience with the mechanism is gained. At the expiration of the MYRP, the utility would have the right, but not the obligation, to come in and seek a base rate increase. The NCUC could also set a period within which the next base rate case must be filed (e.g., within 5 years).<sup>4</sup>

Moreover, other jurisdictions that utilize or have analyzed PBR tools, including MYRPs, have adopted somewhat inconsistent approaches for how to address what happens after an MYRP ends. For example, during the final year of the MYRP term, the State of Hawaii Public Utilities Commission “will comprehensively review the PBR Framework to determine if any modifications or revisions are appropriate.”<sup>5</sup> In Nevada, one whitepaper discussed that the Public Utilities Commission of Nevada would need a process to review the impacts of alternative ratemaking plans upon their conclusion, including to assess whether they should be continued, modified, or eliminated, as well as the possibility of an “offramp” at the end of an MYRP period, which might involve an overearning or underearning threshold that would automatically trigger reversion to a general rate case.<sup>6</sup> As a final example, consider a 2017 Brattle report prepared for DTE Energy in Michigan that suggests “rebasings,” a process for resetting rates at the conclusion of an MYRP based on cost of service.<sup>7</sup> “During the term of the MRP, changes in recorded costs do not

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<sup>4</sup> NERP Report, p. 21 (2020), available at <https://files.nc.gov/ncdeq/climate-change/clean-energy-plan/PBR-Study-Group-Work-Products-FINAL.pdf> (last accessed December 17, 2021).

<sup>5</sup> “Summary of Phase 2 Decision & Order Establishing a PBR Framework,” State of Hawaii Public Utilities Commission (Dec. 23, 2020), p. 3., available at <https://puc.hawaii.gov/wp-content/uploads/2020/12/PBR-Phase-2-DO-5-Page-Summary.Final.12-22-2020.pdf> (last accessed December 17, 2021).

<sup>6</sup> “Concept Paper 4: Minimum Requirements, Evaluation Criteria and Metrics for Alternative Ratemaking in Nevada,” Rocky Mountain Institute & Regulatory Assistance Project, Docket No. 19-06008, available at [https://puc.nv.gov/uploadedFiles/pucnv.gov/Content/Utilities/Electric/Concept\\_Paper\\_4\\_FINAL.pdf](https://puc.nv.gov/uploadedFiles/pucnv.gov/Content/Utilities/Electric/Concept_Paper_4_FINAL.pdf) (last accessed December 17, 2021).

<sup>7</sup> “Performance Based Regulation Plans Goals, Incentives, and Alignment,” The Brattle Group (Dec. 6, 2017), available at

influence changes in rates, and utilities realize all or part of the financial benefits resulting from successful efforts to control costs. However, this benefit does not last forever; these benefits are transferred (in whole or part) to ratepayers when rates are rebased.”<sup>8</sup>

Duke’s proposed rule, however, allows “the base rates, Earnings Sharing Mechanism, and Decoupling Rate-making Mechanism” from the final year of the PBR/MYRP plan to continue.<sup>9</sup> Thus, Duke proposes that it be able to drop one unwanted (from Duke’s perspective, at least) component of the PBR package—the PIM or PIMs—but be able to continue with the other two components of the PBR package. The statute, however, does not contemplate such a disaggregation of the three elements of the PBR application. Section 62-133.16 does not permit PIMs to exist in the absence of a MYRP and decoupling, and the statute does not permit MYRP (or any of its elements, such as an earnings sharing mechanism) and decoupling to exist in the absence of PIMs. The statute also makes clear that all three elements of the PBR application—decoupling, PIMs, and MYRP—terminate at the end of 36 months.

Duke’s misreading of the statute appears to be founded on its confusion over the term “base rates” in its proposed rule. Duke reads the statute as if an MYRP establishes new “base rates”—which can only be established through a general rate case—rather than adjustments to base rates. This distinction is made clear by the definition of “multiyear rate plan,” which means:

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[https://www.michigan.gov/documents/mpsc/Brattle\\_Report\\_to\\_DTE\\_on\\_Performance\\_Based\\_Regulation\\_120617\\_613150\\_7.pdf](https://www.michigan.gov/documents/mpsc/Brattle_Report_to_DTE_on_Performance_Based_Regulation_120617_613150_7.pdf) (last accessed December 17, 2021).

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

<sup>9</sup> Duke Energy Carolinas, LLC and Duke Energy Progress, LLC’s Initial Comments and Proposed Rules to Implement Performance-Based Regulation of Electric Utilities, Docket No. E-100, Sub 178, p. 37 (Nov. 9, 2021).

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.

N.C. Gen. Stat. § 62-133.16(a)(5). As made clear by this definition, as well as N.C. Gen. Stat. §§ 62-133.16(c) and (c)(1)a., an application for PBR is to accompany an application for a general rate case under N.C. Gen. Stat. § 62-133. Once base rates are established, those base rates are increased by “costs associated with a known and measurable set of capital investments, net of operating benefits, associated with a set of discrete and identifiable capital spending projects to be placed in service during the first rate year.”<sup>10</sup> In other words, the MYRP additive is in addition to, and separate from, base rates, just like other rate adjustments authorized by statute and approved by the Commission.

Similarly, the MYRP itself contains two inseparable elements: a mechanism for setting rates and a mechanism for earnings-sharing. An MYRP is defined in the statute as “a rate-making mechanism under which the Commission sets base rates for a multiyear period . . . *along with an earnings sharing mechanism* (emphasis added).”<sup>11</sup> Likewise, the statute clearly defines “Earnings Sharing Mechanism” as a mechanism that applies only “*over the period of time covered by a MYRP*” (emphasis added).<sup>12</sup> Thus, any separation of utility rates from an accompanying earnings-sharing mechanism would defy the plain language of the statute. Moreover, such a separation would lead to potentially harmful results by removing any incentive on the part of the applicable electric public utility to

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

<sup>11</sup> N.C. Gen. Stat. § 62-133.16(a)(5).

<sup>12</sup> *Id.* § 62-133.16(a)(4).

maintain cost-efficient service and provide improved performance. If Duke were permitted to extend the rates of an MYRP while the earnings-sharing mechanism expired, the utility could inadvertently be granted a windfall at the expense of ratepayers who would continue to pay rates set pursuant to forecasted costs with no protection in place against overestimating forecasted costs, and by extension an over-recovery and overearning by the utility on those same costs, if third-year MYRP rates were allowed to continue in perpetuity until the applicable utility elects to file its next general rate case.

Finally, the plain language of the statute makes clear that MYRP rates are not intended to continue beyond the expiration of a PBR plan period. As noted above, an approved PBR application may remain in effect “for a plan period of not more than 36 months.”<sup>13</sup> The PBR application is also limited to proposing “revenue requirements and base rates for *each of the years* that a MYRP is in effect.”<sup>14</sup> Even more clear, applications are required to address a “first rate year,” a “second rate year,” and a “third rate year.”<sup>15</sup> Such language clearly demonstrates the General Assembly’s intent that the provisions of a PBR application, including the MYRP, must be limited in all aspects to the three years that the Commission is authorized to allow it.

Thus, a PBR application is clearly defined as an inseparable unit, which the General Assembly intended to last no more than three years and then expire in its entirety. Allowing Duke to extract one favorable (from Duke’s perspective, at least) piece to survive—

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<sup>13</sup> *Id.* § 62-133.16(f).

<sup>14</sup> *Id.* § 62-133.16(c).

<sup>15</sup> *Id.* § 62-133.16(c)(1)(a).



the MYRP's third-year rates—would run counter to the language of the statute and would be unfair to ratepayers.

## **II. Allowing Third-Year MYRP Rates to Continue in Perpetuity Weakens Commission Oversight and Exposes Ratepayers to Unnecessary Risks.**

Joint Intervenors disagree with the position set forth in Duke's initial comments that the PBR rules adopted by the Commission should provide for an annual PBR review proceeding "that is limited in scope and duration so as to avoid turning the annual review process into a 'mini rate case.'"<sup>16</sup> Joint Intervenors are concerned that Duke's argument to seek an expedient, superficial annual review process will not afford intervening parties or the Commission with an adequate opportunity to conduct a thorough prudence or reasonableness analysis. The only other opportunity to do so ostensibly would not occur until such time as the applicable electric public utility opts to file its next general rate case, which if Duke's proposal to allow third-year MYRP rates to continue in perpetuity beyond the 36-month MYRP expiration date is allowed, could be a lengthy period of time.

Joint Intervenors have serious concerns that Duke's proposal to allow third-year MYRP rates to continue in perpetuity and a superficial annual review process, particularly when taken together, could significantly diminish the effectiveness of using prudence and reasonableness reviews as a regulatory mechanism to ensure that the interests of ratepayers are appropriately balanced against the interests of the utility. Moreover, Joint Intervenors are quite concerned about the expense to ratepayers should the third-year MYRP rates continue, including allowing the utility the opportunity to over-earn by up to 50 basis points on an already inflated revenue requirement that is not statutorily authorized.

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<sup>16</sup> Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Initial Comments and Proposed Rules to Implement Performance-Based Regulation of Electric Utilities, Docket No. E-100, Sub 178, p. 6 (Nov. 9, 2021).

Under these circumstances, Duke will have every incentive to “stay out” of general rate case proceedings as long as possible, over-recovering and over-earning all the while. Joint Intervenors worry that Duke is attempting to lay the groundwork for a scenario similar to that which occurred following the Commission’s August 5, 1988 Order Granting Partial Increase in Rates and Charges in Docket No. E-2, Sub 537, after which CP&L (now DEP) “stayed out” for 24 years. Under current day circumstances, when there is tremendous and unprecedented upward pressure on electric rates, Joint Intervenors believe a balance must be struck between reducing the frequency with which Duke files applications for general rate cases and inadvertently crossing the line into incentivizing Duke to “stay out.”

For all the foregoing reasons, Joint Intervenors respectfully believe that Duke’s proposal to perpetuate any component of an approved PBR application beyond the end of the third year is a clear violation of N.C. Gen. Stat. § 62-133.16.

### **Conclusion**

Joint Intervenors appreciate the opportunity to file these joint reply comments and proposed edits to the Public Staff’s proposed rule to implement PBR in North Carolina pursuant to N.C. Gen. Stat. § 62-133.16, as recently enacted by the passage of House Bill 951 (S.L. 2021-165).

WHEREFORE, Joint Intervenors respectfully request that the Commission consider these joint reply comments and proposed PBR rules.

Respectfully submitted, this the 17<sup>th</sup> day of December, 2021.

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**CERTIFICATE OF SERVICE**

The undersigned attorney for CIGFUR certifies that she served by electronic mail the foregoing Joint Reply Comments of CIGFUR, CUCA, NCSEA, NC Justice Center, NC Housing Coalition, Sierra Club, and SACE upon the parties of record in this proceeding, as set forth in the service list for this docket maintained by the Chief Clerk of the North Carolina Utilities Commission.

This the 17<sup>th</sup> day of December, 2021.

By: /s/ Christina D. Cress  
Christina D. Cress

## APPENDIX A

### CUCA, CIGFUR, NCSEA, & NCJC et al. Proposed Revisions to Public Staff Proposed Rule

#### 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. §G.S.~~ 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~~authorized by the Commission 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)~~ "Carbon Plan" means the plan required to be developed no later than December 31, 2022, which aims to "achieve a seventy percent (70%) reduction in emissions of carbon dioxide (CO2) emitted in the State from electric generating facilities owned or operated by [Duke Energy Carolinas, LLC and Duke Energy Progress, LLC] from 2005 levels by the year 2030 and carbon neutrality by the year 2050" by Part I of S.L. 2021-165.

~~(2)~~~~(3)~~ "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.

~~(4)~~ "Data Dashboard" means a publicly available platform where collected data is uploaded in native format with formulae intact and working macros (i.e., spreadsheets should be filed as Microsoft Excel documents or another native format, as opposed to being filed as PDFs), and summaries are provided with accessible graphic formats for analysis and presentation of collected data.

~~(3)~~~~(5)~~ "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)~~~~(6)~~ "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. A DER may be utilized by a customer or electric public utility individually or in aggregate.

- (5)(7) "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)(8) "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)(9) "Multiyear rate plan" or "MYRP" 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.
- (10) "PBR application" means an application for a general rate case that includes an application for PBR and meets all requirements of G.S. 62-133.16 and this Rule.
- (8)(11) "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)(12) "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)(13) "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)(14) "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)(15) "Tracking metric" means a methodology for tracking and quantitatively measuring and monitoring outcomes or electric public utility performance.
- (e) (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 shall initiate a proceeding to consider and approve policy goals which, upon approval, will be eligible for consideration in connection with the purpose establishment of setting policy goals that PIMs proposed in any proceeding initiated by an electric public utility to adopt a MYRP may target. PBR plan. Any party to the proceeding may propose policy goals. The Commission shall consider policy goals relating to

- the enumerated considerations for reviewing PBR applications listed in G.S. 62-133(d)(2).
- (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 utility performance related to 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; provided, however, 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.
- (3) Each recommended policy goal shall be accompanied by:
- A clear statement defining and explaining the policy goal;
  - an explanation as to why the goal is appropriate;
  - suggested metrics for- measuring success in achieving the goal;
  - a timeline to achieve the policy goal. Any policy goal extending beyond one year must also include incremental annual achievement targets; and
  - supporting analyses, workpapers, modeling, and any other information needed to provide reasonable justification for implementing the policy goal with data provided in native format with formulae intact and working macros.
- (4) Government funds and third-party investments may be leveraged for the direct financial benefit of ratepayers to achieve policy goals.
- ~~(4)~~(5) Upon a showing of good cause by any party, or upon the Commission's own motion, policy goals may be evaluated and reviewed, and, if necessary, improved at any time.
- ~~(d)~~ (d) Technical Conference
- (1) No later than ~~90~~120 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 process regarding projected transmission and distribution expenditures, pursuant to G.S. § 62-133.16(j)(3). -The applicable electric public utility will make a presentation during the first phase of the Technical Conference. Interested parties will be allotted at least one (1) hour during part two of the Technical Conference to make related presentations; provided, however, that part two of the Technical Conference shall not be scheduled less than 30 days after the first day of the Technical Conference.
- (2) In the first phase of the Technical Conference , the electric public utility shall present the following information regarding Capital Spending Project expenditures:
- 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 Capital Spending Project and how the overall proposal advances system efficiency, reliability, or is necessary to comply with applicable federal operational or design requirements;
  - c. An explanation, including analysis (to be made publicly available by filing same in the applicable docket) of how the applicable electric public utility's proposed expenditures fulfill the least cost requirements set forth in G.S. 62-2(a)(3a) and Part I of Section 1. of S.L. 2021-165;
  - d. An explanation of the load forecasting methodology the electric public utility relied on when determining needs related to load growth;
  - e. A summary of the alternatives, including third-party owned or operated alternatives (including non-wires alternatives), that the electric public utility considered; and
  - f. The projected costs of each program and project.
- (3) The electric public utility shall post its presentations, including all supporting data in native format, to its Data Dashboard and file all documents converted to a file format accepted by the Clerk's Office in the pertinent Commission docket(s) at least ten business days prior to the first phase of the Technical Conference.
- ~~(2)~~(4) During the second phase of the Technical Conference, interested parties will have an opportunity to present their own information and to provide both comment and feedback on the applicable electric public utility's presentation. The second phase of the Technical Conference shall not be scheduled less than 30 days after the first day of the Technical Conference. Parties seeking to participate in a technical conference process by providing comment, feedback, and/or its own presentation shall file a notice with the Commission, along with any materials it intends to present or share 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). Each interested party will be allotted at least one (1) hour during the second phase of the Technical Conference to make related presentations.
- ~~(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. a. ~~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:

~~Shall~~ shall file, along with its application for a general rate increase pursuant to G.S. § 62-133 and Commission Rule R1-17, a PBR application which shall comply with the requirements set forth in G.S. 62-133.16 and this Rule. In any PBR application, the applicable electric public utility:

~~(1)~~          Shall file a proposed decoupling ratemaking mechanism together with the following supporting information:

a. A statement of the utility's goals for the decoupling mechanism, including:

i. How the proposed decoupling mechanism complies with G.S. 62-133.16;

~~(1)~~ii. Any alternative residential rate designs for Commission consideration that include stake into account the break in the link between an electric public utility's revenue and the level of consumption of electricity on a per-customer basis brought about by the following decoupling mechanism;

iii. Whether and how the proposed decoupling mechanism will further the policy goal of encouraging energy efficiency; and

iv. The utility's plan for evaluating the success of the decoupling mechanism, consistent with G.S. 62-133.16(c)(1)c.3.

b. A detailed explanation of how the proposed decoupling mechanism will or will not affect the company's cost of capital;

~~a-c.~~          The applicable residential rate schedules and riders eligible to be affected by the decoupling;

~~b-d.~~          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;

~~e-e.~~          Proposed distribution of the weather-normalized per residential customer unit revenue requirement for each month in each rate year, along with the applicable electric public utility's underlying assumptions, calculations, and methodology;

~~d-f.~~          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.g. The proposed method for calculating and deferring differences realized between the estimated and actual revenue per customer;

f.h. For 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; and
  - 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;
- i. The applicable electric public utility's proposals to mitigate the risk of rate shock for each customer class and the justification for not so providing if a proposal lacks such provision;
  - j. Alternative methods for distributing the decoupling credit or surcharge on a volumetric basis, for Commission consideration, that take into account the rate impact of residential customers at various usage levels.
  - k. An explanation of how the decoupling mechanism will work in concert with other financial incentives for energy efficiency activities, e.g., lost revenue adjustments, and how the costs and benefits attributable to the decoupling mechanism will be contained within the residential class of customers to the greatest possible extent.
  - l. A statement of whether and how the design of the decoupling mechanism will ensure there is no double recovery of revenues.
  - m. A statement of how the decoupling rate adjustment will be displayed on the customer's bill and the electric public utility's plans for customer education to explain the decoupling adjustment; and
  - n. The utility's application shall include information and supporting documentation to show how interclass subsidization of ratepayers will be "minimized to the greatest extent practicable by the conclusion of the MYRP period" pursuant to G.S. 62-133.16(b).
- (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 supporting information:
- 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 [with data provided to the parties in native format with formulae intact and working macros](#).
- 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 [with data provided to the parties in native format with formulae intact and working macros](#).
  - 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 impacts on peak demand](#), and the number of expected customers, with weather normalization, all accompanied by detailed workpapers supporting each of these items [with data provided to the parties in native format with formulae intact and working macros](#).
  - e. The electric public utility's forecasting methodology, [input data, and assumptions](#) 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. [Forecasts supporting transmission and distribution expenditures should be sufficiently granular \(i.e., at the substation or circuit level\) to justify the electric public utility's proposed load-related investments at specific geographic locations](#).
  - f. A detailed description of and detailed workpapers, [with data provided to the parties in native format with formulae intact and working macros](#), 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, [with data provided to the parties in native format with formulae intact and working macros](#), supporting all expected and reasonably estimable [increases in operating revenue or reductions in operating revenue deductions and rate base expected in each of the annual MYRP rate periods, and \(i\) an explanation of whether and, if so, why any of these has been excluded from the calculated revenue requirements for each rate period, and \(ii\) to the extent that any of these have been excluded, how adequate ratepayer protection will be accomplished](#). 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, [with data provided to the parties in native format with formulae intact and working macros](#), 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, [with data provided to the parties in native format with formulae intact and working macros](#); and
  - v. [Otherwise fully complies with the requirements set forth in subsection u. of this section and G.S. 62-133.16\(b\)](#)
- 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 [with data provided to the parties in native format with formulae intact and working macros](#) 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. [Detailed justification for each Capital Spending Project, including the rationale for selecting the proposed project.](#)
  - ~~iii.~~ [iii.](#) The scope of each Capital Spending Project,
  - ~~iv.~~ [iv.](#) The timing of each Capital Spending Project,
  - ~~v.~~ [v.](#) The depreciation life of each Capital Spending Project by year,
  - ~~vi.~~ [vi.](#) Changes expected in the depreciable life of each Capital Spending Project for two years after the conclusion of the MYRP, and
  - ~~vii.~~ [vii.](#) 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. [Prioritization of the Capital Spending Projects.](#)

- ~~f.o.~~ g.o. 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 and a side-by-side or similar comparison showing how such benefits are factored into the electric public utility's proposed revenue requirement.
- ~~g.p.~~ h.p. Projected depreciation of rate base associated with the Capital Spending Projects during each rate year of the MYRP period.
- ~~h.q.~~ i.q. A reconciliation, accompanied by detailed workpapers with data provided to the parties in native format with formulae intact and working macros, 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.
- ~~g.r.~~ h.r. 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, including historical weather data and adjustments, as well as an example calculation.
  - iii. Proposed revenue requirements for each rate year of the MYRP.
- ~~f.s.~~ g.s. 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~~ 62-133 with data provided to the parties in native format with formulae intact and working macros, 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, as calculated pursuant to G.S. § 62-133;
  - ii. Proposed base rates and revenues, annualized for the end of the test year, as calculated pursuant to G.S. § 62-133; and,
  - iii. Proposed base rates and revenues pro forma for each year of the MYRP.
- ~~s.t.~~ t.t. AFor each year of the MYRP, 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~~ 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, and if so, how the proposed MYRP addresses anyeach 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. Analysis indicating whether post-test year cost increases exceed forecasts of regional public utility cost escalation rates produced by an independent third party.
- ~~d.e.~~ 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, or if the estimated budget exceeded the actual cost.

~~(4) — One or more clearly defined PIMs that include:~~

- (4) Using the policy goals adopted by the Commission in the Policy Docket pursuant to Rule R8- (c), the utility shall propose one or more clearly defined PIMs for Commission consideration. The Commission shall also consider clearly defined PIMs proposed by intervenors that would further policy goals adopted by the Commission in the Policy Docket. For each PIM proposed, the utility or sponsoring intervenor shall provide:
- a. A detailed explanation of how the proposed PIM supports or advances the policy goal(s) adopted pursuant to Rule R8- (c);
  - b. A statement explaining how the outcome or performance of the PIM is solely or primarily within the control of the applicable electric public utility;
  - c. A statement explaining the fair allocation of penalties or rewards to shareholders or customers, respectively; and
  - d. Proposed tracking metrics with targets or benchmarks to measure the applicable electric public utility's achievement, which shall:
    - i. Incorporate specific data definitions;
    - ii. Include a precise formula to quantify performance, including reasonably available data;
    - iii. Set forth requirements for data collection and analysis practices and techniques;

- iv. Specify what collected data will be required to be reported and how quantified performance will be reported to the Commission during each quarter of the applicable rate year on the Data Dashboard; and
- v. Identify and include verification of the applicable electric public utility's techniques that can be independently verified by stakeholders.

~~a.e.~~ Identification of ~~one or more~~ each of the 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);~~

~~e.f.~~ 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~~ PIM or PIMs, including the incremental costs for the utility to achieve the performance target;

~~d.g.~~ Identifiable and measurable metrics that will be used to assess compliance, including but not limited to data necessary to establish a baseline for measuring performance, 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~~ meet the ~~policy goal~~ performance target;

~~e.h.~~ A penalty to be refunded to and /or 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.i.~~ A detailed explanation of:

~~a)i.~~ 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)ii.~~ 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.

~~j.~~ Supporting data and documentation that is not filed confidentially pursuant to G.S. 132-1.2 or 66-152(3).

(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.~~ Aa 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 ~~NGG.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.

~~(7)~~ The utility's application shall include a statement acknowledging the Commission's authorization to include a set of projects and associated costs in a utility's MYRP does not constitute a prudence determination.

~~(8)~~ With the filing of a PBR application, the electric public utility must file a new depreciation study completed within the preceding 180 days.

~~(f)~~ (f) Procedure Upon the Filing of a General Rate Case That Includes a PBR Application

~~(1)~~ Before filing a general rate case that includes a PBR application, each applicable electric public utility shall ensure, to the greatest extent practicable, that no other PBR applications have been filed by another electric public utility within the 180 days immediately preceding the respective utility's filing; provided, however, that

this Rule shall not apply to an electric public utility filing a rate case containing a PBR application pursuant to the recourse for underearning during an MYRP period set forth in G.S. 62-133.16(c)(1)c.1.

- ~~(1)~~(2) 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)~~(3) 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).
- (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 establish a procedural schedule for intervention and the filing of testimony and discovery guidelines.
- ~~(3)~~(6) 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)~~(7) 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)~~(8) 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)~~(9) 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.
- (10) After hearing, the Commission will issue an order approving, modifying, or rejecting the electric public utility's PBR application together with an order on the application for general rate case under G.S. 62-133
- (11) Regardless of whether the Commission approves a PBR application and MYRP, the Commission shall nevertheless also establish base rates pursuant to G.S. 62-133.
- ~~(g)~~ (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~~ a modified PBR application seeking to cure the defects identified by the Commission, 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~~ 90 days of such notice. If the 10-day window expires without the public utility filing such notice or the electric public utility files notice that it does not intend to cure the defects identified, the G.S. 62-133 base rates established by the Commission in its final order setting rates and rejecting a PBR application shall take effect and continue until further order of the Commission in the utility's next general rate case.
- (2) If the Commission allows a utility to attempt to cure deficiencies in the rejected application and refile, the utility must:
- a. Demonstrate that it has satisfactorily addressed each of the Commission's identified deficiencies; and
- b. Refile its modified PBR application, including all supporting schedules, and provide testimony discussing the changes made to address the Commission's identified deficiencies.
- (3) The Commission may then open a period for discovery requests and responses from intervenors regarding the modifications proposed by the electric public utility following rejection of a PBR application, followed by testimony from intervenors regarding the modifications.
- ~~(2)~~(4) Upon the re filing of a modified PBR application that the electric public utility has been rejected attempted to cure following rejection 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~~ 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)~~ (h) An electric public utility may not file a general rate case application for rates to be effective during the term of ~~its~~sany multiyear rate plan except as permitted by G.S. ~~§~~62-133.16(c)(1)c.1. and (e).

- ~~(i)~~ (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)~~ (j) Annual Review ~~of PBR Results: and Reconciliation Proceeding:~~ Decoupling, MYRP Earnings Sharing, and PIMSPIMs

~~(1)~~ ~~(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 electric public 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 with data provided to the parties in native format with formulae intact and working macros.
- 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 Annual Rate Adjustment Procedure:

- a. The Commission shall annually establish a proceeding to review an electric public utility's earnings, as affected by weather normalization, decoupling, and any other adjustments to annual earnings found reasonable and appropriate by the Commission, and as adjusted to take into account ~~the~~any other 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 no later than 60 days following the conclusion of the rate year, the utility shall annually file testimony with exhibits and workpapers, with data provided to the parties in native format with formulae intact and working macros,~~ that sets forth the utility's earned return on equity for the prior MYRP Rate Year, with appropriate adjustments.

b. The ~~The~~ Within 90 days of the end of the preceding MYRP rate year, the utility shall file the following:

- ~~b.~~ testimony and exhibits that provide a comparison of the estimated and actual costs and revenues during each year of the plan, as well as an explanation of the reasons for the variances.

- ~~i.~~ The, including full justification for all project substitutions or other material changes. Project details for all projects shall be provided, including the

initial budget, the final cost, and the date each project was booked to plant in-service. In addition, for each project the electric public utility shall also file should provide all project documents including business cases, capital project expenditure applications, change order forms, project close out reports, and work orders;

e.ii. an analysis of the historical accuracy of the utility's short-term, medium-term, and long-term cost and load forecasts.

d.c. ~~The utility~~ The utility's testimony and exhibits shall ~~file~~ include 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.d. 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~~ authorized return 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. Capital Spending Projects shall be reviewed during the Annual Review and Reconciliation proceeding, including any project substitutions or other material changes made. 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.e. 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.f. A list of Capital Spending Projects that were canceled or postponed.

h.g. A proposal to adjust rates to stop collecting any excess costs related to budgets that exceed actual costs, or related to canceled or postponed Capital Spending Projects, and to refund to customers any excess costs already collected, unless such proposal has previously been resolved by the Commission.

i.h. A statement~~Testimony~~ that presents the utility's earnings during the subject year of the MYRP, as appropriately adjusted, and states whether the earnings 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.i. The calculation of the billing factors for any proposed refunds to customers of surplus earnings.

k.j. Detailed workpapers and supporting documentation for each of the above items, with data provided to parties in native format with formulae intact and working macros.

- (3) PIMs ~~—The utility shall file—~~ Within 90 days following the end of the preceding MYRP rate year, the utility shall file testimony and exhibits setting forth the calculations of all increment and decrement billing factors associated with the PIMSPIMs approved by the Commission for the MYRP rate period, ~~and~~. Such filing shall 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 R8-69 from those associated with the approved PIMs. The utility shall provide all workpapers and with data provided to the parties in native format with formulae intact and working macros, in addition to supporting documentation verifying and supporting the results of the metrics used to quantify the PIMs' results.
- (4) Overall PBR rate year rider(s) – ~~The~~Within 90 days following the end of the preceding MYRP rate year, the utility shall file testimony and exhibits showing 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 with data provided to the parties in native format with formulae intact and working macros.
- (5) AuditAnnual Review and Reconciliation Procedure. – The MYRP shall be subject to the following:

a. Upon the utility's filing of its Annual Rate Adjustment testimony, the Commission shall establish a procedural schedule that sets out a timeline for discovery and testimony by intervenors.

~~a.b. Upon issuance of a Commission Order scheduling a public hearing on setting forth the procedural schedule regarding the utility's MYRP and report Annual Rate Adjustment filing, the utility shall provide timely notice to customers as required by the Commission. The public hearing may be subject to cancellation if no significant protests are received.~~

~~b.c. 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.~~

d. Any interested party may be granted full intervention status and rights.

~~e.e. 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.f. 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.g. 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.

(6) Any position, argument, action, or recommendation of any intervenor in any Annual Review and Reconciliation Proceeding conducted pursuant to this subsection regarding the reasonableness or prudence of revenues, expenses, or rate base items will be subject to a reservation of that intervenor's rights to review and contest the reasonableness and/or prudence of Capital Spending Project costs in future rate cases. Similarly, no conclusion, finding, or ordering language of the Commission regarding the reasonableness or prudence of revenues, expenses, or rate base items shall preclude an intervenor from investigating, reviewing, or contesting – and the Commission finding – that cost recovery should be disallowed for any costs that were not reasonably or prudently incurred.

~~(k)~~ (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 4560 days after the first three-month period, and subsequent reports shall be made every three months thereafter. Each filing shall include workpapers with data provided to parties in native format with formulae intact and working macros, and shall contain the following:

(1) Data by which to quantitatively measure utility performance pursuant to established tracking metrics for each PIM.

~~(1)~~(2) 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 initial estimated total cost and any revisions to this estimate;
  - iv. The completion date estimated in the MYRP; and
  - v. The actual completion date or, if not complete, the current estimated completion date.

(3) The calculation of the total deferred differences between the estimated and actual revenue per customer class, and the status of the decoupling regulatory asset or liability, along with detailed supporting workpapers.

(4) Each quarterly filing shall be uploaded to the Data Dashboard.

~~(t)~~ (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)~~ (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 initiate a proceeding to adjust base rates or PIMs.

(n) Rates following Expiration of PBR Ratemaking Mechanisms— Any rate adjustments, earnings sharing mechanism, decoupling mechanism, and PIM incentives made or authorized pursuant to a MYRP are effective only during the period of the approved plan. Following the expiration of ~~the multiyear plan~~ any MYRP period, ~~the rates for set pursuant to G.S. 62-133 as approved in the current MYRP rate year~~ general rate case approving the MYRP rates will automatically take effect.

(o) No electric public utility shall remain in effect until further order of the Commission be permitted to begin the technical conference process set forth in section (d) of this Rule before January 1, 2023.

## **APPENDIX B**

### **CUCA, CIGFUR, NCSEA, & NCJC et al. Proposed Revisions to Public Staff Proposed Rule**

#### **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 G.S. 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) authorized by the Commission 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) "Carbon Plan" means the plan required to be developed no later than December 31, 2022, which aims to "achieve a seventy percent (70%) reduction in emissions of carbon dioxide (CO<sub>2</sub>) emitted in the State from electric generating facilities owned or operated by [Duke Energy Carolinas, LLC and Duke Energy Progress, LLC] from 2005 levels by the year 2030 and carbon neutrality by the year 2050" by Part I of S.L. 2021-165.
- (3) "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.
- (4) "Data Dashboard" means a publicly available platform where collected data is uploaded in native format with formulae intact and working macros (i.e., spreadsheets should be filed as Microsoft Excel documents or another native format, as opposed to being filed as PDFs), and summaries are provided with accessible graphic formats for analysis and presentation of collected data.
- (5) "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.
- (6) "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. A DER may be utilized by a customer or electric public utility individually or in aggregate.

- (7) "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.
  - (8) "Electric public utility" means an electric public utility as defined in G.S. 62-3(23) that is subject to the Commission's jurisdiction.
  - (9) "Multiyear rate plan" or "MYRP" 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.
  - (10) "PBR application" means an application for a general rate case that includes an application for PBR and meets all requirements of G.S. 62-133.16 and this Rule.
  - (11) "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.
  - (12) "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.
  - (13) "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.
  - (14) "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.
  - (15) "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, the Commission shall initiate a proceeding to consider and approve policy goals which, upon approval, will be eligible for consideration in connection with the establishment of PIMs in any proceeding initiated by an electric public utility to adopt a PBR plan. Any party to the proceeding may propose policy goals. The Commission shall consider policy goals relating to the enumerated considerations for reviewing PBR applications listed in G.S. 62-133(d)(2).
  - (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 utility performance related to 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; provided, however, 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.

- (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 with data provided in native format with formulae intact and working macros.
  - (4) Government funds and third-party investments may be leveraged for the direct financial benefit of ratepayers to achieve policy goals.
  - (5) Upon a showing of good cause by any party, or upon the Commission's own motion, policy goals may be evaluated and reviewed, and, if necessary, improved at any time.
- (d) Technical Conference
- (1) No later than 120 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 process regarding projected transmission and distribution expenditures, pursuant to G.S. 62-133.16(j)(3). The applicable electric public utility will make a presentation during the first phase of the Technical Conference. Interested parties will be allotted at least one (1) hour during part two of the Technical Conference to make related presentations; provided, however, that part two of the Technical Conference shall not be scheduled less than 30 days after the first day of the Technical Conference.
  - (2) In the first phase of the Technical Conference , the electric public utility shall present the following information regarding Capital Spending Project 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 Capital Spending Project and how the overall proposal advances system efficiency, reliability, or is necessary to comply with applicable federal operational or design requirements;
    - c. An explanation, including analysis (to be made publicly available by filing same in the applicable docket) of how the applicable electric public utility's proposed expenditures fulfill the least cost requirements set forth in G.S. 62-2(a)(3a) and Part I of Section 1. of S.L. 2021-165;

- d. An explanation of the load forecasting methodology the electric public utility relied on when determining needs related to load growth;
  - e. A summary of the alternatives, including third-party owned or operated alternatives (including non-wires alternatives), that the electric public utility considered; and
  - f. The projected costs of each program and project.
- (3) The electric public utility shall post its presentations, including all supporting data in native format, to its Data Dashboard and file all documents converted to a file format accepted by the Clerk's Office in the pertinent Commission docket(s) at least ten business days prior to the first phase of the Technical Conference.
- (4) During the second phase of the Technical Conference, interested parties will have an opportunity to present their own information and to provide both comment and feedback on the applicable electric public utility's presentation. The second phase of the Technical Conference shall not be scheduled less than 30 days after the first day of the Technical Conference. Parties seeking to participate in a technical conference process by providing comment, feedback, and/or its own presentation shall file a notice with the Commission, along with any materials it intends to present or share 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). Each interested party will be allotted at least one (1) hour during the second phase of the Technical Conference to make related presentations.
- (e) PBR Application. – An electric public utility seeking approval of PBR shall file, along with its application for a general rate increase pursuant to G.S. 62-133 and Commission Rule R1-17, a PBR application which shall comply with the requirements set forth in G.S. 62-133.16 and this Rule. In any PBR application, the applicable electric public utility:
- (1) Shall file a proposed decoupling ratemaking mechanism together with the following supporting information:
    - a. A statement of the utility's goals for the decoupling mechanism, including:
      - i. How the proposed decoupling mechanism complies with G.S. 62-133.16;
      - ii. Any alternative residential rate designs for Commission consideration that take into account the break in the link between an electric public utility's revenue and the level of consumption of electricity on a per-customer basis brought about by the decoupling mechanism;
      - iii. Whether and how the proposed decoupling mechanism will further the policy goal of encouraging energy efficiency; and
      - iv. The utility's plan for evaluating the success of the decoupling mechanism, consistent with G.S. 62-133.16(c)(1)c.3.
    - b. A detailed explanation of how the proposed decoupling mechanism will or will not affect the company's cost of capital;
    - c. The applicable residential rate schedules and riders eligible to be affected by the decoupling;
    - d. 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;

- e. Proposed distribution of the weather-normalized per residential customer unit revenue requirement for each month in each rate year, along with the applicable electric public utility's underlying assumptions, calculations, and methodology;
  - f. 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;
  - g. The proposed method for calculating and deferring differences realized between the estimated and actual revenue per customer;
  - h. For 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; and
    - 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;
  - i. The applicable electric public utility's proposals to mitigate the risk of rate shock for each customer class and the justification for not so providing if a proposal lacks such provision;
  - j. Alternative methods for distributing the decoupling credit or surcharge on a volumetric basis, for Commission consideration, that take into account the rate impact of residential customers at various usage levels.
  - k. An explanation of how the decoupling mechanism will work in concert with other financial incentives for energy efficiency activities, e.g., lost revenue adjustments, and how the costs and benefits attributable to the decoupling mechanism will be contained within the residential class of customers to the greatest possible extent.
  - l. A statement of whether and how the design of the decoupling mechanism will ensure there is no double recovery of revenues.
  - m. A statement of how the decoupling rate adjustment will be displayed on the customer's bill and the electric public utility's plans for customer education to explain the decoupling adjustment; and
  - n. The utility's application shall include information and supporting documentation to show how interclass subsidization of ratepayers will be "minimized to the greatest extent practicable by the conclusion of the MYRP period" pursuant to G.S. 62-133.16(b).
- (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 supporting information:
- 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 with data provided to the parties in native format with formulae intact and working macros.
- 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 with data provided to the parties in native format with formulae intact and working macros.
  - 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 impacts on peak demand, and the number of expected customers, with weather normalization, all accompanied by detailed workpapers supporting each of these items with data provided to the parties in native format with formulae intact and working macros.
  - e. The electric public utility's forecasting methodology, input data, and assumptions 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. Forecasts supporting transmission and distribution expenditures should be sufficiently granular (i.e., at the substation or circuit level) to justify the electric public utility's proposed load-related investments at specific geographic locations.
  - f. A detailed description of and detailed workpapers, with data provided to the parties in native format with formulae intact and working macros, 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, with data provided to the parties in native format with formulae intact and working macros, supporting all expected and reasonably estimable increases in operating revenue or reductions in operating revenue deductions and rate base expected in each of the annual MYRP rate periods, and (i) an explanation of whether and, if so, why any of these has been excluded from the calculated revenue requirements for each rate period, and (ii) to the extent that any of these have been excluded, how adequate ratepayer protection will be accomplished. 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, with data provided to the parties in native format with formulae intact and working macros, 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;
    - iv. Jurisdictional and customer class allocation factors and accompanying workpapers, with data provided to the parties in native format with formulae intact and working macros; and
    - v. Otherwise fully complies with the requirements set forth in subsection u. of this section and G.S. 62-133.16(b)
  - 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 with data provided to the parties in native format with formulae intact and working macros 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. Detailed justification for each Capital Spending Project, including the rationale for selecting the proposed project.
    - iii. The scope of each Capital Spending Project,
    - iv. The timing of each Capital Spending Project,
    - v. The depreciation life of each Capital Spending Project by year,
    - vi. Changes expected in the depreciable life of each Capital Spending Project for two years after the conclusion of the MYRP, and
    - vii. 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. Prioritization of the Capital Spending Projects.

- o. 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 and a side-by-side or similar comparison showing how such benefits are factored into the electric public utility's proposed revenue requirement.
  - p. Projected depreciation of rate base associated with the Capital Spending Projects during each rate year of the MYRP period.
  - q. A reconciliation, accompanied by detailed workpapers with data provided to the parties in native format with formulae intact and working macros, 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.
  - r. 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, including historical weather data and adjustments, as well as an example calculation.
    - iii. Proposed revenue requirements for each rate year of the MYRP.
  - s. 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 data provided to the parties in native format with formulae intact and working macros, 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, as calculated pursuant to G.S. § 62-133;
    - ii. Proposed base rates and revenues, annualized for the end of the test year, as calculated pursuant to G.S. § 62-133; and
    - iii. Proposed base rates and revenues pro forma for each year of the MYRP.
  - t. For each year of the MYRP, 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, and if so, how the proposed MYRP addresses each 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. Analysis indicating whether post-test year cost increases exceed forecasts of regional public utility cost escalation rates produced by an independent third party.
  - e. 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, or if the estimated budget exceeded the actual cost.
- (4) Using the policy goals adopted by the Commission in the Policy Docket pursuant to Rule R8-\_\_(c), the utility shall propose one or more clearly defined PIMs for Commission consideration. The Commission shall also consider clearly defined PIMs proposed by intervenors that would further policy goals adopted by the Commission in the Policy Docket. For each PIM proposed, the utility or sponsoring intervenor shall provide:
- a. A detailed explanation of how the proposed PIM supports or advances the policy goal(s) adopted pursuant to Rule R8-\_\_(c);
  - b. A statement explaining how the outcome or performance of the PIM is solely or primarily within the control of the applicable electric public utility;
  - c. A statement explaining the fair allocation of penalties or rewards to shareholders or customers, respectively; and
  - d. Proposed tracking metrics with targets or benchmarks to measure the applicable electric public utility's achievement, which shall:
    - i. Incorporate specific data definitions;
    - ii. Include a precise formula to quantify performance, including reasonably available data;
    - iii. Set forth requirements for data collection and analysis practices and techniques;
    - iv. Specify what collected data will be required to be reported and how quantified performance will be reported to the Commission during each quarter of the applicable rate year on the Data Dashboard; and
    - v. Identify and include verification of the applicable electric public utility's techniques that can be independently verified by stakeholders.

- e. Identification of each of the policy goals adopted by the Commission pursuant to R8-\_\_(c)(2) or (3);
  - f. An estimate of the impact to annual and total revenue requirements (NC retail jurisdiction and customer classes) that would result from implementation of the PIM or PIMs, including the incremental costs for the utility to achieve the performance target;
  - g. Identifiable and measurable metrics that will be used to assess compliance, including but not limited to data necessary to establish a baseline for measuring performance, 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 meet the performance target;
  - h. A penalty to be refunded to and/or 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.
  - i. A detailed explanation of:
    - i. 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
    - ii. 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.
  - j. Supporting data and documentation that is not filed confidentially pursuant to G.S. 132-1.2 or 66-152(3).
- (5) The electric public utility may include in its application
- a. 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 G.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.
  - (7) The utility's application shall include a statement acknowledging the Commission's authorization to include a set of projects and associated costs in a utility's MYRP does not constitute a prudence determination.
  - (8) With the filing of a PBR application, the electric public utility must file a new depreciation study completed within the preceding 180 days.
- (f) Procedure Upon the Filing of a General Rate Case That Includes a PBR Application
- (1) Before filing a general rate case that includes a PBR application, each applicable electric public utility shall ensure, to the greatest extent practicable, that no other PBR applications have been filed by another electric public utility within the 180 days immediately preceding the respective utility's filing; provided, however, that this Rule shall not apply to an electric public utility filing a rate case containing a PBR application pursuant to the recourse for underearning during an MYRP period set forth in G.S. 62-133.16(c)(1)c.1.
  - (2) 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.
  - (3) 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).
  - (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 establish a procedural schedule for intervention and the filing of testimony and discovery guidelines.
  - (6) 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.

- (7) 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).
  - (8) 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.
  - (9) 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.
  - (10) After hearing, the Commission will issue an order approving, modifying, or rejecting the electric public utility's PBR application together with an order on the application for general rate case under G.S. 62-133
  - (11) Regardless of whether the Commission approves a PBR application and MYRP, the Commission shall nevertheless also establish base rates pursuant to G.S. 62-133.
- (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 a modified PBR application seeking to cure the defects identified by the Commission, 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 90 days of such notice. If the 10-day window expires without the public utility filing such notice or the electric public utility files notice that it does not intend to cure the defects identified, the G.S. 62-133 base rates established by the Commission in its final order setting rates and rejecting a PBR application shall take effect and continue until further order of the Commission in the utility's next general rate case.
  - (2) If the Commission allows a utility to attempt to cure deficiencies in the rejected application and refile, the utility must:
    - a. Demonstrate that it has satisfactorily addressed each of the Commission's identified deficiencies; and
    - b. Refile its modified PBR application, including all supporting schedules, and provide testimony discussing the changes made to address the Commission's identified deficiencies.

- (3) The Commission may then open a period for discovery requests and responses from intervenors regarding the modifications proposed by the electric public utility following rejection of a PBR application, followed by testimony from intervenors regarding the modifications.
  - (4) Upon the refiling of a modified PBR application that the electric public utility has attempted to cure following rejection 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 any multiyear rate plan except as permitted by G.S. 62-133.16(c)(1)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 and Reconciliation Proceeding: 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 electric public 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 with data provided to the parties in native format with formulae intact and working macros.
  - 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 Annual Rate Adjustment Procedure:
- a. The Commission shall annually establish a proceeding to review an electric public utility's earnings, as affected by weather normalization, decoupling, and any other adjustments to annual earnings found reasonable and appropriate by the Commission, and as adjusted to take into account any other 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, no later than 60 days following the conclusion of the rate year, the utility shall annually file testimony with exhibits and workpapers, with data provided to the parties in native format with formulae intact and working macros, that sets forth the utility's earned return on equity for the prior MYRP Rate Year, with appropriate adjustments.
  - b. Within 90 days of the end of the preceding MYRP rate year, the utility shall file the following:
    - i. testimony and exhibits that provide a comparison of the estimated and actual costs and revenues during each year of the plan, as well as an explanation of the reasons for the variances, including full justification for all project substitutions or other material changes. Project details for all projects shall be provided, including the initial budget, the final cost, and the date each project was booked to plant in-service. In addition, for each project the electric public utility should provide all project documents including business cases, capital project expenditure applications, change order forms, project close out reports, and work orders;
    - ii. an analysis of the historical accuracy of the utility's short-term, medium-term, and long-term cost and load forecasts.

- c. The utility's testimony and exhibits shall include 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.
  - d. 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 authorized return 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. Capital Spending Projects shall be reviewed during the Annual Review and Reconciliation proceeding, including any project substitutions or other material changes made. 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.
  - e. 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.
  - f. A list of Capital Spending Projects that were canceled or postponed.
  - g. A proposal to adjust rates to stop collecting any excess costs related to budgets that exceed actual costs, or related to canceled or postponed Capital Spending Projects, and to refund to customers any excess costs already collected, unless such proposal has previously been resolved by the Commission.
  - h. Testimony that presents the utility's earnings during the subject year of the MYRP, as appropriately adjusted, and states whether the earnings fell within, exceeded the high-end, or fell below the authorized returns established by the Commission. If the utility contends that its earnings fell below the 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.
  - i. The calculation of the billing factors for any proposed refunds to customers of surplus earnings.
  - j. Detailed workpapers and supporting documentation for each of the above items, with data provided to parties in native format with formulae intact and working macros.
- (3) PIMs – Within 90 days following the end of the preceding MYRP rate year, the utility shall file testimony and exhibits setting forth the calculations of all increment and decrement billing factors associated with the PIMs approved by the Commission for the MYRP rate period. Such filing shall 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 R8-69 from those associated with the approved PIMs. The utility shall provide all workpapers with data provided to the parties in native format with formulae intact and working macros, in addition to supporting documentation verifying and supporting the results of the metrics used to quantify the PIMs' results.
- (4) Overall PBR rate year rider(s) – Within 90 days following the end of the preceding MYRP rate year, the utility shall file testimony and exhibits showing 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 with data provided to the parties in native format with formulae intact and working macros.
- (5) Annual Review and Reconciliation Procedure. – The MYRP shall be subject to the following:
- a. Upon the utility's filing of its Annual Rate Adjustment testimony, the Commission shall establish a procedural schedule that sets out a timeline for discovery and testimony by intervenors.
  - b. Upon issuance of a Commission Order setting forth the procedural schedule regarding the utility's Annual Rate Adjustment filing, the utility shall provide timely notice to customers as required by the Commission.
  - c. 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.
  - d. Any interested party may be granted full intervention status and rights.
  - e. 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.
  - f. 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.
  - g. If the Commission concludes that the utility's earnings fell below the 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.
- (6) Any position, argument, action, or recommendation of any intervenor in any Annual Review and Reconciliation Proceeding conducted pursuant to this subsection regarding the reasonableness or prudence of revenues, expenses, or rate base items will be subject to a reservation of that intervenor's rights to review and contest the reasonableness and/or prudence of Capital Spending Project costs in future rate cases. Similarly, no conclusion, finding, or ordering language of the Commission regarding the reasonableness or prudence of revenues, expenses, or rate base items shall preclude an intervenor from investigating, reviewing, or contesting – and the Commission finding – that cost recovery should be disallowed for any costs that were not reasonably or prudently incurred.

(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 60 days after the first three-month period, and subsequent reports shall be made every three months thereafter. Each filing shall include workpapers with data provided to parties in native format with formulae intact and working macros, and shall contain the following:

- (1) Data by which to quantitatively measure utility performance pursuant to established tracking metrics for each PIM.
- (2) 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 sales, and service revenue for the three months for each rate class;
  - 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 initial estimated total cost and any revisions to this estimate;
    - iv. The completion date estimated in the MYRP; and
    - v. The actual completion date or, if not complete, the current estimated completion date.
- (3) The calculation of the total deferred differences between the estimated and actual revenue per customer class, and the status of the decoupling regulatory asset or liability, along with detailed supporting workpapers.
- (4) Each quarterly filing shall be uploaded to the Data Dashboard.

(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 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 initiate a proceeding to adjust base rates or PIMs.

(n) Rates following Expiration of PBR Ratemaking Mechanisms. – Any rate adjustments, earnings sharing mechanism, decoupling mechanism, and PIM incentives made or authorized pursuant to a MYRP are effective only during the period of the approved plan. Following the expiration of any MYRP period, rates set pursuant to G.S. 62-133 as approved in the general rate case approving the MYRP rates will automatically take effect.

(o) No electric public utility shall be permitted to begin the technical conference process set forth in section (d) of this Rule before January 1, 2023.