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March 16, 2022

VIA ELECTRONIC FILING

Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**RE: Duke Energy Carolina, LLC, Duke Energy Progress, LLC and
Dominion Energy North Carolina's Joint Initial Comments
Concerning Multiyear Rate Plan Projects and CPCN
Requirements
Docket No. E-100, Sub 178**

Dear Ms. Dunston:

Enclosed for filing in the above-referenced docket, please find Duke Energy Carolinas, LLC, Duke Energy Progress, LLC and Dominion Energy North Carolina's Joint Initial Comments Concerning Multiyear Rate Plan Projects and CPCN Requirements.

If you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Jirak", written in a cursive style.

Jack E. Jirak

Enclosure

cc: Parties of Record

OFFICIAL COPY

Mar 16 2022

**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 INITIAL COMMENTS OF DUKE ENERGY CAROLINAS, LLC, DUKE ENERGY PROGRESS, LLC, AND DOMINION ENERGY NORTH CAROLINA CONCERNING MULTIYEAR RATE PLAN PROJECTS AND CPCN REQUIREMENTS
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NOW COME Duke Energy Carolinas, LLC (“DEC”), Duke Energy Progress, LLC (“DEP” and together with DEC, the “Duke Utilities”), and Virginia Electric Power Company, d/b/a Dominion Energy North Carolina (“DENC” and together with DEC and DEP, the “Utilities”), by and through their legal counsel, and respectfully submit the following initial comments in response to Ordering Paragraph Four (4) of the North Carolina Utilities Commission’s (“Commission”) *Order Adopting Commission Rule R1-17B* issued on February 10, 2022, in the above-captioned docket (“PBR Order”). Specifically, the Utilities’ initial comments address the Commission’s questions related to the interplay between the consideration of capital projects proposed for cost recovery as part of a Performance-Based Ratemaking (“PBR”) Application and the statutory requirements of a Certificate of Public Convenience and Necessity (“CPCN”).

The Utilities hereby respond to the Commission’s questions as follows:

INITIAL COMMENTS

I. Introduction

Pursuant to the PBR Order, the Commission adopted Rule R1-17B (the “PBR Rule”), which outlines the process for a utility to file and the Commission to consider a

PBR Application pursuant to N.C. Gen. Stat. § 62-133.16, which was enacted as part of Session Law 2021-165 (“HB 951”). The Utilities appreciate the opportunity to address the questions identified by the Commission with respect to CPCN considerations in the context of PBR Applications.

The PBR Rule reflects a constructive framework, and its application will continue evolving over time as the Commission, the Public Staff, stakeholders, and the utilities gain experience with its implementation. The Commission noted in the PBR Order that it may establish additional rulemaking proceedings with regard to PBR Applications, and that “as with all Commission rules the PBR Rule is open to revision as the Commission refines the PBR process and all parties learn more of this process and how it should best be handled going forward.”¹ The Commission has identified three questions concerning the application of the CPCN statute to capital projects proposed as part of a multi-year rate plan (“MYRP”), and resolution of those questions will provide clarity as the PBR Rule is applied going forward.

N.C. Gen. Stat. § 62-133.16 provides a performance based ratemaking alternative to the traditional ratemaking construct in North Carolina that will better align utility performance incentives with customer benefits and state policy goals. Additionally, one of the many purposes of PBR—indeed a key consideration in the enactment of HB 951—is to improve regulatory efficiency and reduce the administrative burden and expenses of frequent general rate cases and related regulatory proceedings to facilitate the capital investments necessary to achieve North Carolina’s clean energy goals while maintaining

¹ PBR Order at 14.

cost-effective and reliable electric service. The PBR Rule adopted by the Commission is consistent with those purposes.

The Utilities' earlier comments in this proceeding also emphasized that the rules implementing PBR should be broad enough to provide flexibility during the PBR regulatory process as lessons are learned through its early implementation. The Utilities cautioned against hard coding overly rigid processes and timelines into the Commission's rules during the early implementation of the statute, emphasizing that flexibility around the structure and processes will be paramount. The Utilities stated that the PBR rules should facilitate an efficient regulatory process that appropriately balances effective regulatory oversight with the need to allow the utility to exercise appropriate managerial discretion while executing its business for the benefit of customers and fulfilling the utility's obligation to provide safe and reliable service.

Consistent with those goals, the PBR Rule provides reasonable requirements to organize the development of, and evaluation of, a PBR Application while not over-prescribing process to an extent that would hamper a utility's ability to efficiently pursue recovery of capital investments or create incentives contrary to the clean energy transition in North Carolina. The rule also includes an efficient and effective process for annual review of an approved PBR plan that is limited in scope and duration that allows for effective and efficient monitoring by the Commission.

The purpose of HB 951 and the PBR Rule should continue to guide the implementation as the Commission, the utilities, and other stakeholders learn how to apply it and identify remaining questions to be addressed concerning the PBR process. This includes, specifically for purposes of these comments, the analysis of questions

surrounding the intersection between the PBR process and CPCNs required for certain capital projects that may be included in a MYRP. The Utilities' responses to these questions are therefore consistent with the themes that guided their earlier comments in this docket: efficiency, flexibility, and maintaining the balance between preserving utility management discretion and providing safe and reliable service.

II. Comments in Response to Commission Questions

- **PBR Order Question 1: Whether the Commission may approve cost recovery within a MYRP for capital projects for which a CPCN is required but has not been granted as of the date the PBR Application is approved.**

Yes, the Commission may approve cost recovery for capital projects approved for inclusion in a MYRP and for which a CPCN is required but has not been granted as of the date the PBR Application is approved. HB 951 does not directly address the Commission's question. However, an interpretation of N.C. Gen. Stat. § 62-133.16 that prohibits the Commission from approving capital projects that, where applicable, have not yet obtained a CPCN injects unnecessary inefficiency into the PBR and overall regulatory process, which contravenes the goals of HB 951 and the PBR Rule. Importantly, the requirements established by the statute and the PBR Rule for PBR Applications, which require an explanation of the need and costs for any capital project proposed for inclusion in a MYRP, and the opportunity for parties to review and evaluate the Utilities' proposed MYRP as part of the PBR Application proceeding, will provide the Commission a fully developed record on which it may approve capital projects in a substantially similar manner as will occur in a CPCN proceeding. Stated differently, the fundamental assessment of need and cost required under a PBR Application is coterminous with the fundamental assessment of need and costs required under a CPCN application. Finally, the Carbon Plan process for the

Duke Utilities will in certain cases also serve as the justification of need both for purposes of the PBR Application and the CPCN process.

- A. The PBR process requires a showing of need and reasonable cost for MYRP projects that is effectively identical to the showing of need and reasonable cost required for CPCN and will provide ample opportunity for scrutiny by the Commission and other parties, such that a CPCN prerequisite is unnecessary.

Both the PBR Application process and the CPCN process require essentially the same determination from the Commission—whether the capital project is needed and whether the projected cost is reasonable.

The PBR Application process includes a requirement that the utility demonstrate that the proposed capital project is needed and is at a reasonable cost. Rule R1-17B(d)(2)(j) requires that utilities seeking MYRP approval address, among other things, the need, scope, and projected cost of each capital project included in its proposed MYRP. As noted in the PBR Order, “[a]n evaluation of prudence for the proposed capital investments in the MYRP will be performed by the Public Staff and other intervenors during the PBR rate case proceeding.”² The Public Staff and other intervenors will therefore have the opportunity to closely scrutinize the MYRP projects along with the rest of the PBR Application through discovery, testimony, and cross examination. The Commission also stated in the PBR Order that its “initial finding in authorizing the capital projects approved in a PBR Application is that those projects are reasonable and prudent for the utility to pursue during the MYRP period.”³ Therefore, at the conclusion of the PBR process, the Commission will have concluded that any approved capital projects are necessary and beneficial for customers and that the proposed cost is reasonable.

² PBR Order at 40.

³ PBR Order at 40.

This determination of need required in the context of a PBR Application is essentially identical to the determination of need required for a CPCN for a generating or transmission capital project. N.C. Gen. Stat. § 62-110.1(a) specifies that prior to construction of an electric generating facility, the utility must obtain from the Commission “a certificate that public convenience and necessity requires, or will require, such construction.”⁴ Applications for a CPCN under N.C. Gen. Stat. § 62-110.1(a) must include, among other things, information regarding “an explanation of the need for the facility” and how the proposed facility meets that need as well as projected cost information and construction information including construction schedules.⁵ Similarly, prior to the construction of a new transmission line, N.C. Gen. Stat. § 62-101(a) requires the utility to obtain from the Commission a certificate of environmental compatibility and public convenience and necessity.⁶ Applications under this statute must include a description of the proposed transmission line, projected costs, and “the reasons the transmission line is needed.”⁷

Because there is no fundamental difference between the need and cost determination required under the PBR Application process and that required under the CPCN process, the Commission may approve cost recovery with a MYRP for a capital project that has not yet obtained a CPCN. The Commission and intervenors will have ample opportunity to review cost estimates for capital projects that will need a CPCN. There is therefore no reason to exclude from the PBR process projects that need but do not

⁴ N.C. Gen. Stat. § 62-110.1(a).

⁵ See also Rule R8-61(b)(1)(iv)-(v). R8-61(b)(3) (cost information) and R8-61(b)(4) (construction information).

⁶ For purposes of these comments, CPCNs under 62-110.1(a) and CECNs under 62-101(a) will be referred to collectively as “CPCNs.”

⁷ N.C. Gen. Stat. § 62-102(a)(1); see also Rule R8-62(c)(1) and R8-62(c)(3)(b).

yet have a CPCN, as a CPCN is not required for the Commission to determine that a proposed MYRP project is needed and that the proposed cost is prudent.

It is helpful to consider the specific types of capital projects that are likely to be both included in a PBR Application and require a CPCN. The Utilities currently anticipate that, more than likely, the only such resources will be (1) new transmission lines greater than 161 kilovolts and (2) solar generating facilities. This is because under HB 951, new generation facilities for which the total plant in service balance exceeds \$500 million are not permitted to be included in a PBR Application.⁸ To the extent that new natural gas, wind, or nuclear generation projects are selected by the Commission as part of the Carbon Plan or otherwise required, such resources will in almost all cases exceed the \$500 million limit to be included in a MYRP. Therefore, the only generation projects likely to be included in a MYRP are solar projects. And new transmission projects greater than 161 kilovolts are the other type of projected capital project that could be included in a MYRP and, in some cases, require a CPCN.

In the case of solar generating resources for the Duke Utilities, DEC's and DEP's expectation is that all new utility-owned solar will be solar selected by the Commission under the Carbon Plan. The Commission will approve its initial Carbon Plan for the Duke Utilities on or before December 31, 2022, well in advance of any decision on a future PBR Application. Therefore, at the time Commission is called upon to evaluate in a PBR Application for the Duke Utilities whether there is a need for a projected amount of solar generation capital projects, it will be able to rely on its determination in DEC's and DEP's Carbon Plan and any related determinations regarding the framework in which solar is

⁸ N.C. Gen. Stat. § 62-133.16(c).a.

being procured (*e.g.*, any formal request for proposals framework like the potential 2022 solar procurement). Simply stated, with respect to projected solar generation, the Commissions' Carbon Plan decision for the Duke Utilities will determine the need for new solar generating resources in accordance with the pricing and operational characteristics assumed in such Carbon Plan. This predetermination regarding the need for solar will lead to a more efficient and streamlined determination of need in the context of a DEC or DEP PBR Application and further confirm that there will be ample evidentiary basis on which to making a finding of need for purposes of DEC or DEP MYRP rate recognition in advance of any required CPCN application or transfer request.

The types of transmission projects that are likely to be included in a MYRP generally fall into four categories (1) reliability upgrades, (2) interconnection projects, (3) customer delivery, and (4) with respect to the Duke Utilities, proactive transmission constructed to facilitate the Carbon Plan. The majority of such projects will not require a CPCN. However, in any case in which a transmission project is both included in a MYRP and requires a CPCN, the Commission will once again have more than adequate opportunity to assess and consider the need for and cost of the transmission project in the context of the PBR Application. More specifically, the Commission and all parties will have a fulsome opportunity through both the N.C. Gen. Stat. § 62-133.16(j) transmission and distribution technical conference and the PBR Application process itself to thoroughly review the need for all such transmission investments. In the case of any proactive transmission projects, such projects will be very long lead time projects (3-5 years) that, if a CPCN is required (which would likely not be the case for upgrades of existing lines), would likely result in the utility having been required to obtain a CPCN prior to any PBR

Application requesting MYRP rate recovery (since the in-service date would likely fall 3-5 years after work on the upgrades commences).

The Utilities generally expect that if the Commission has approved the need for the projected cost of a capital spend project in the PBR Application, the CPCN process will not reach a different conclusion in the absence of any material change in circumstances (as is addressed further below). Thus, the Utilities believe that there is only a minimal risk that a capital project will receive MYRP rate recognition in a PBR Application but then subsequently be denied a CPCN (or the Utilities subsequently determine not to pursue a CPCN). But the potential for the subsequent cancellation or modification of a MYRP capital project was already considered by the Commission in the PBR Rules Order. Specifically, the Commission acknowledged the potential for changes in capital projects but noted the obligation of the utility to exercise discretion for the benefit of customers and the ability for the Commission to monitor such changes and review the changes to ensure prudence.

Finally, it should be noted that even after a CPCN is granted, the Commission's and the Public Staff's ability to evaluate the actual capital investments made pursuant to the approved PBR Application extends beyond the initial approval of the MYRP. This continued evaluation will occur through the quarterly reporting process established by Rule R1-17B(h) and the earnings sharing mechanism or "ESM" annual reviews under N.C. Gen. Stat. § 62-133.16(h) and Rule R1-17B(g), as well as through the opportunity to determine reasonableness and prudence of the Utilities' execution of approved capital investments in the future.⁹ These requirements and processes provide additional opportunities for the

⁹ See PBR Order at 40.

Commission and other parties to examine the Utilities' adherence to the approved MYRP and to address recovery of any projects that were cancelled or not issued a statutorily required CPCN.

- B. HB 951's policy goals promoting improved administrative efficiency and flexibility and minimizing regulatory lag support the Commission's ability to approve MYRP projects prior to receipt of CPCNs.

First, the Commission's ability to approve capital projects prior to issuance of a CPCN will promote the administrative efficiency and flexibility goals of HB 951 and ensure that the PBR actually facilitates achievement of state policy goals as intended. To require a CPCN for inclusion of a proposed capital project in a MYRP would inhibit PBR policy goals in several ways. First, it would essentially deny MYRP rate recovery for certain capital investments that are needed for achievement of the Duke Utilities' Carbon Plan goals despite the fact that, in many cases, the Commission will have already made a finding that such resources are in fact needed by DEC and DEP. Second, the utility would be forced to either (1) put off filing a PBR Application until it obtains CPCNs for all such projects increasing regulatory lag, or (2) file more frequent rate cases, either by requesting PBR applications with a MYRP shorter than the full 36 months or being forced to file a new rate case if earnings fall below the authorized return on equity, all of which scenarios would minimize administrative efficiency. These potential outcomes would also frustrate a core goal of HB 951 which is to minimize rate case frequency.¹⁰ Finally, these outcomes would compromise the Utilities' ability to plan for and manage and operate their respective systems to best serve customers.

¹⁰ See NERP 2020 Final Report at 15: "One of the top three desired outcomes identified by NERP is to create utility incentives aligned with cost control and policy goals. The effect of MYRPs in reducing regulatory lag on the kinds of new investments needed under the CEP is another key alignment of utility incentives with policy goals."

- **PBR Order Question 2: If a capital project is approved for cost recovery in an approved PBR Application and a CPCN has not been granted, whether the approval of the project in the PBR Application be considered in the CPCN approval process.**

Yes, if a capital project is approved for cost recovery in an approved PBR Application and a CPCN has not been granted for that project, the approval of the project in the PBR Application should be considered in the CPCN approval process. As explained above, since the determination of need will have already been made in a PBR Application, in the absence of any material changes in facts or circumstances, there is no reason to require a complete reassessment of essentially the same determination.

Prohibiting consideration of the approval of a capital project as part of a PBR Application during the CPCN proceeding for that project would be an inefficient use of Commission, Public Staff, intervenor, and utility time and resources and contrary to the overarching goal of administrative efficiency underlying HB 951 and the PBR Rule. While HB 951 does not exempt a capital project that is approved by the Commission as part of a MYRP from the requirement to obtain a CPCN under the relevant CPCN statute, the CPCN proceeding for that project should be fairly streamlined and uncontroversial, because the Commission can consider the record from the PBR proceeding and its prior determination that the project is reasonable and prudent to pursue. In fact, at a later date, it might be appropriate to consider ways in which to streamline the CPCN process and related rules for solar generating projects and transmission projects that have already been deemed necessary under the Duke Utilities' Carbon Plan, approved under a PBR Application process, and even potentially procured through a Commission-approved DEC or DEP procurement process. This is consistent with the Commission's recognition in its November 19, 2021 *Order Requiring Filing of Carbon Plan and Establishing Procedural*

Deadlines in Docket No. E-100, Sub 179 (“Carbon Plan Scheduling Order”) that it will likely be necessary to similarly amend the IRP rules to better align with the changing regulatory processes (such as the Duke Utilities’ Carbon Plan).¹¹ In both cases, the goal is regulatory efficiency and avoiding functionally duplicative regulatory processes. North Carolina law already allows the Commission to consider need to have been established in determinations made in other proceedings in certain situations. N.C. Gen. Stat. § 62-110.6 provides that the Commission shall determine the need for and, if need is established, approve an estimate of, the construction costs and schedule for an electric generating facility in another state that is intended to serve retail customers in North Carolina. Subpart (c) of that statute requires the Commission to consider and determine the need for the facility, and in so doing allows the Commission to consider “whether the state in which the facility will be sited has issued a certificate or license for construction of the facility and approved a construction cost estimate and construction schedule for the facility.” The statute therefore permits the Commission to account for a finding of need and approval of cost and scheduling estimates outside of the instant proceeding (and from another state) to support a finding of need in the Commission proceeding under N.C. Gen. Stat. § 62-110.6. Considering a finding of need for a capital project approved as part of a PBR plan—in which North Carolina stakeholders would have had the opportunity to weigh in and the Commission itself would have made the reasonableness and prudence determination—in addressing a CPCN request for the same project would be consistent with this process.

¹¹ Carbon Plan Scheduling Order at 1-2.

- **PBR Order Question 3: Whether the parties anticipate that a PBR Application could request cost recovery approval for capital projects which the utility filing the PBR Application does not yet own, and therefore, for which a party other than the utility filing the PBR Application would be filing the application for the CPCN.**

Yes, a utility can include as part of its MYRP proposal capital projects which it does not yet own and for which another party other than the electric utility filing the PBR Application would be filing a CPCN application. A similar but alternative scenario could occur where the utility purchases an existing asset that does already have a North Carolina CPCN.

HB 951 does not limit a MYRP to capital projects that the electric utility already owns; thus, the electric utility can include capital projects that it anticipates acquiring later in time during the MYRP, as long as the project would go in service during the MYRP period. Any projects that are developed by a third-party developer, which the utility later purchases, could be included as a MYRP capital project, including both build-own-transfer projects that already have CPCNs in North Carolina and other project structures that do not have CPCNs.

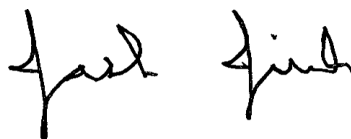
In fact, the Duke Utilities anticipate a high likelihood that many of the solar generating projects that are identified as needed in their Commission-approved Carbon Plan will be procured through a formal competitive process (*e.g.*, the Duke Utilities' proposed 2022 solar procurement) pursuant to which the utility will be purchasing solar generating assets from third parties and self-developing solar generation assets. Depending on the timing of the PBR Application, the transfer of legal ownership may not have occurred as of the date of the PBR Application for these DEC or DEP assets. Nevertheless, as explained above, the Commission would have ample basis through its Carbon Plan determination and potentially through oversight of the procurement structure in order to

confirm that the project is needed, irrespective of when in the development process ownership may transfer and whether the third-party has already obtained a CPCN at the time of the PBR Application for one of the Duke Utilities.

Allowing a utility to request cost recovery approval through a PBR Application for such projects is also appropriate for the same policy reasons of efficiency and flexibility articulated in response to Question 1. This approach would provide the Utilities the flexibility to plan for and manage their systems in the manner most beneficial to customers and, with respect to projects contemplated in the Duke Utilities' Carbon Plan and/or 2022 solar procurement, in the way most appropriate to meet the statute's carbon reduction goals. This approach would also avoid forcing the utility to put off filing a PBR Application until it obtains CPCNs for all such projects, or file traditional rate cases in the interim between three-year PBR plans, both of which would frustrate the administrative efficiency goal of the statute to minimize rate case frequency.

CONCLUSION

WHEREFORE, Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Dominion Energy North Carolina respectfully request the Commission consider the foregoing initial comments in issuing an order addressing these proposed questions and grant any other relief the Commission deems reasonable and appropriate.



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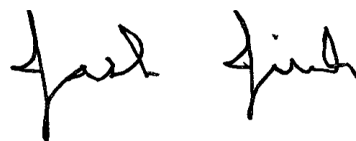
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*Counsel for Virginia Electric and Power
Company, d/b/a Dominion Energy North
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CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC, Duke Energy Progress, LLC and Dominion Energy North Carolina's Joint Initial Comments Concerning Multiyear Rate Plan Projects and CPCN Requirements, in Docket No. E-100, Sub 178, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid, to parties of record.

This the 16th day of March, 2022.



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