
Reply Report: Additional Recommendations for Implementing PBR with Customer Protections in North Carolina

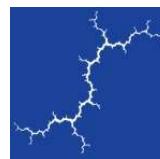
Docket E-100, Sub 178

Prepared on Behalf of the
Carolina Utility Customers Association

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INTRODUCTION

In their initial comments, the non-utility stakeholders widely recognized that N.C. Gen. Stat. § 62-133.16 lacks many of the common elements of traditional Performance-Based Regulation (PBR) that would encourage utilities to operate more efficiently in return for providing utilities with greater revenue certainty and faster cost recovery through a multi-year rate plan (MYRP). Because of the PBR statute's omissions, there is great need to establish additional ratepayer protections in the Commission's rules. In particular, the Commission's rules should strive to rectify the information asymmetries and risk to customers from setting multi-year revenue requirements based on utility cost forecasts, rather than an external index. Further, the Commission's rules should address the incentive for the utility to overstate its cost forecasts that would be created by allowing the utility to retain a portion of any underspend up to 50 basis points through an earnings sharing mechanism.

For North Carolina's version of PBR to serve the public interest, the Commission must ensure that the reasonableness of utility cost forecasts is thoroughly established and that the utility does not profit by overstating its cost forecasts. To this end, and consistent with the general theme of the initial comments from the non-utility commenters, we reiterate our recommendations from our initial report regarding the information that the utility should be required to provide in its PBR application and annual true-up filings, as well as our proposal that any under-spend be returned to ratepayers.

In this report, we supplement our initial report with several additional recommendations:

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

We discuss each of these recommendations below and note where these recommendations align with the recommendations made by other parties in their initial comments.



TRANSPARENCY IN COST FORECASTS AND PLANNING

Need for Commission Guidance on Data Sharing and Stakeholder Engagement

Historically, utility planning activities and investment decisions were largely opaque until the utility requested cost recovery in a rate case. Many factors are coalescing to turn this model on its head, including the proliferation of distributed energy resources (and associated non-wires solutions), carbon reduction goals, and, with the newly enacted law in North Carolina, the provision in G.S. § 62-133.16 authorizing rate adjustments to be established based on utility forecasts.¹ It is no longer the case that utility investments are necessarily the optimal solution for providing grid services or meeting public policy goals, and approving investments based on utility cost forecasts will require that investment plans undergo heightened scrutiny to ensure that they are least cost. Such sentiments were widely echoed by other intervenors in their initial comments. For example, the Tech Customers noted the need for “a high level of specificity about proposed spending and projected operating benefits to satisfy the statutory standard and allow for meaningful review,”² and the Carolina Industrial Group for Fair Utility Rates (CIGFUR) called for “increasing transparency and accountability with regard to the utility’s planning, modeling, and forecasting inputs.”³

However, this transparency cannot be limited to the PBR term. While it is critical that the utilities thoroughly document the reasonableness of the investments underlying the cost forecasts presented in their PBR applications and annual filings, the transparency must also extend to the utilities’ planning processes, where investment plans are initially determined. For example, data regarding actual and forecasted peak loads at the system and substation levels are vital for enabling third parties to propose non-wires alternatives to traditional capital investments and understanding whether the utility’s proposed investments are necessary and least-cost. Such information is critical in the new regulatory paradigm; planning processes should be updated to account for this need.

Numerous regulatory commissions have recognized the need to increase transparency and meaningfully engage stakeholders in planning processes, particularly where such plans inform the development of cost forecasts for MYRPs. For example, in 2015, the New York Public Service Commission identified maximizing the availability of information as a high priority and required the utilities to make granular system data available in their planning documents and through a web portal.⁴ Since 2016, each regulated electric utility in New York State has implemented an online portal for sharing electric system data, including

¹ Per statute, the rate adjustments are to be set based on “projected incremental Commission-authorized capital investments that will be used and useful during the rate year and associated expenses, net of operating benefits, including operation and maintenance savings, and depreciation of rate base associated with the capital investments, that are incurred or realized during each rate year of the MYRP period.” G.S. § 62-133.16(c)(1)(a).

² Tech Customers Initial Comments, p. 4.

³ CIGFUR Initial Comments, p. 3.

⁴ New York Public Service Commission, Case 14-M-0101, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015) (REV Track 1 Order).



capital investment plans, planned resiliency/reliability projects, hosting capacity, beneficial locations for distributed energy resources, system load forecasts, historical system load data, and opportunities for non-wires alternatives. To further facilitate data sharing, the New York Commission opened a proceeding in 2020 regarding the strategic use of energy related data, resulting in an order to establish an Integrated Energy Data Resource (IEDR) that “securely collects, integrates, and provides useful access to a large and diverse set of energy-related information on one statewide data platform.”⁵

Similarly, Minnesota, California, and Nevada all require their state’s regulated electric utilities to make available substantial granular system data to improve the transparency of utility planning activities, including the identification of grid needs and non-wires alternatives. Where needed, each commission has addressed grid and customer data security issues through special investigatory proceedings.⁶

To ensure that the investment plans and assumptions underlying a utility’s PBR cost forecasts are reasonable, we recommend that the Commission take steps to enhance transparency and stakeholder participation in utility planning practices informed by the approaches taken by states such as New York, Minnesota, California, and Nevada. The North Carolina utilities’ planning processes must afford stakeholders the opportunity for robust participation in reviewing assumptions, developing alternative solutions, and vetting the results of utility modeling efforts. To meaningfully engage, stakeholders must be provided with data, information, and access to models that have historically been closely guarded by the utilities. Additionally, the processes should be moderated by independent facilitators to ensure that they are not dominated by the utilities and that stakeholder recommendations are fully considered.

Utility Demonstration of Compliance

Improving transparency and stakeholder participation in planning processes as described above is an important prerequisite to ensuring that utility PBR plans serve the public interest. However, the utility’s PBR application must also directly link its MYRP cost forecasts to such plans, or otherwise demonstrate the reasonableness of the projects included in its MYRP. As noted by the North Carolina Justice Center et al. in their initial comments, G.S. § 62-2 declares the public policy of the state to include the following objectives:

- that utility service be adequate, reliable, and economical;
- that rates be just and reasonable; and
- that energy planning result in the least cost mix of generation and demand-reduction measures achievable.

⁵ New York Public Service Commission, CASE 20-M-0082 - Proceeding on Motion of the Commission Regarding Strategic Use of Energy Related Data. Order Implementing an Integrated Energy Data Resource (Issued and Effective February 11, 2021)

⁶ For example, in 2020 the Minnesota Public Utilities Commission opened its *Investigation on Grid and Customer Security Issues Related to Public Display or Access to Electric Distribution Grid Data* in Docket No. E999/CI-20-800.



To ensure that these objectives are met, a utility filing a PBR application should demonstrate that its investments meet these criteria. We generally support CIGFUR's recommendation that the utility should provide a statement of whether and how the planned expenditure complies with the "least cost" requirements set forth in statute. Such a statement should be accompanied by data and analysis (or references to studies in which such data and analysis are provided) to demonstrate compliance.⁷

In addition, we support CIGFUR's proposal that utility provide "A detailed statement, including all supporting data, of whether and how the applicable electric public utility has incorporated into its PBR application stakeholder feedback and recommendations stemming from the myriad stakeholder groups and collaboratives currently underway, as applicable to the filing electric public utility."⁸ Such a statement will help to provide assurance that stakeholder input has received meaningful consideration.

COMMISSION AUTHORIZATION AND PRUDENCY DETERMINATIONS

North Carolina's PBR statute requires that changes in base rates during the MYRP period "be based on projected incremental Commission-authorized capital investments that will be used and useful during the rate year."⁹ However, the statute also requires that rates be just and reasonable. Thus, if an investment is later found to have been imprudent, the Commission should disallow the imprudently-incurred costs. Such determinations can only be made *ex post*, once the total costs are known. For this reason, **we recommend that the Commission clarify that authorization to undertake capital investments identified in a utility's PBR application does not constitute a prudency determination.**

Clarifying that Commission authorization of projected capital investment plans does not constitute a prudency determination is consistent with the practices of other jurisdictions that rely on forecasts of utility capital investments when approving MYRPs. For example:

- The Maryland Public Service Commission conducts prudency reviews in a subsequent rate case, at which time it also reconciles projected costs to actuals.¹⁰
- The New York Public Service Commission explicitly states that while the MYRP revenues are set based on specific projects, the Company has the flexibility to modify those investments as needs change, as it "is always required to make only those investments that are prudent and necessary to serve its customers."¹¹

⁷ CIGFUR Initial Comments, p. 19.

⁸ CIGFUR Initial Comments, p. 5.

⁹ G.S. § 62-133.16(c)(1)(a).

¹⁰ Maryland Public Service Commission, Case No. 9618, Order Establishing Multi-Year Rate Plan Pilot, February 4, 2020.

¹¹ New York Public Service Commission, Order Adopting Terms of Joint Proposal and Establishing Electric And Gas Rate Plan, Cases 19-E-0065 and 19-G-0066, January 16, 2020, p. 37.



TIMING OF PBR APPLICATIONS

To protect stakeholder participation, the Commission should craft a PBR rule that prohibits a potential flood of information from simultaneously-filed utility PBR applications. Staggering PBR applications will ensure a meaningful opportunity to review and comment on a PBR application. Thus, we concur with the recommendations by CIGFUR¹² and Public Staff¹³ to stagger utility filings.

In addition, a utility's PBR application should be informed by the Commission's Carbon Plan, which must be developed by December 31, 2022. We therefore endorse NCSEA's proposal that the Commission's rules should not allow a PBR plan to be filed before January 1, 2023.¹⁴

RATES FOLLOWING THE PBR TERM

The statute clearly specifies how revenue requirements and rates shall be calculated for each of the years that an MYRP is in effect, but it is silent regarding how rates should be adjusted following the conclusion of the MYRP term. Simply permitting the rates to continue at the levels set during the MYRP would create an imbalance between ratepayers and the utility, as the rates of the MYRP would continue, but without the ratepayer protection of the MYRP's earnings sharing mechanism.

Jurisdictions have taken different approaches to this issue. In New York, the Commission has required the earnings sharing mechanism to continue if the Company does not file for new base rates to take effect within 15 days after the expiration of the MYRP.¹⁵ In Maryland, the Commission has simply required that the utility operating under an MYRP file a new rate case at least 210 days prior to the end of the MYRP such that the rates would take effect immediately following the expiration of the MYRP term.¹⁶

We recommend that the Commission likewise adopt rules that would ensure that ratepayer and utility interests are balanced following the conclusion of an MYRP. This could take the form of continuing all ratepayer protections contained in the MYRP or requiring the utility to file a new rate case in time for rates to become effective immediately following the PBR term. Alternatively, as recommended by NCSEA¹⁷ and CIGFUR,¹⁸ the Commission could simply recognize that the MYRP rate adjustments are time-

¹² CIGFUR, Initial Comments, pp. 9-11.

¹³ Public Staff Initial Comments, pp. 5-6.

¹⁴ NCSEA, Initial Comments, p. 3.

¹⁵ New York Public Service Commission, Order Approving Electric and Gas Rate Plans, Cases 16-E-0060, et al., January 25, 2017.

¹⁶ Maryland Public Service Commission, Case No. 9618, Order Establishing Multi-Year Rate Plan Pilot, February 4, 2020.

¹⁷ NCSEA Initial Comments, p. 32.

¹⁸ CIGFUR Initial Comments, p. 8.



limited and expire with the expiration of the MYRP, thereby leaving in place the rates established with the first year of the MYRP based on a historical test year. This could be effectuated by making adjustments to rates during the MYRP term through a rider. At the conclusion of the MYRP term, the rider should be reset to zero until costs are rebased in a subsequent a rate case. Consistent with traditional rate-setting principles—and the apparent intent of the North Carolina implementation of PBR, this would ensure that at the conclusion of the rate plan, the rates in effect are those established under G.S. § 62-133, rather than under an MYRP.

