

**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)	ORDER ADOPTING
Performance-Based Regulation of)	COMMISSION RULE R1-17B
Electric Utilities)	

BY THE COMMISSION: On October 13, 2021, the Governor signed into law House Bill 951 (S.L. 2021-165), enacting N.C. Gen. Stat. § 62-133.16 which authorizes performance-based regulation (PBR) for electric public utilities (PBR Statute). To implement the statute, the Commission is directed to adopt rules no later than February 10, 2022.

On October 14, 2021, the Commission issued an Order Requesting Comments and Proposed Rules in the above-captioned proceeding (Rulemaking Order). In that order, the Commission requested comments and proposed rules to implement the newly enacted N.C.G.S. § 62-133.16.

On various dates petitions to intervene were filed by the following parties and were granted by orders of the Commission: Carolina Industrial Group for Fair Utility Rates I, II, and III (CIGFUR); Carolina Utility Customers Association, Inc. (CUCA); North Carolina Sustainable Energy Association (NCSEA); North Carolina Retail Merchants Association (NCRMA); North Carolina Electric Membership Corporation (NCEMC); Nucor Steel-Hertford (Nucor); North Carolina Justice Center (NCJC); the North Carolina Housing Coalition (NCHC); the Sierra Club; and the Southern Alliance for Clean Energy (SACE, together with NCJC, NCHC, and NRDC, NCJC et al.); Tech Customers; Fayetteville Public Works Commission; Electricities; City of Charlotte; Carolinas Clean Energy Business Association (CCEBA). In addition, a Notice of Intervention was filed by the North Carolina Attorney General's Office (AGO). The Public Staff's intervention is recognized pursuant to N.C.G.S. § 62-15(d) and Commission Rule R1-19(e).

On November 9, 2021, the Public Staff filed initial comments and proposed rules. On that same date, CIGFUR, NCRMA, NCSEA, Duke Energy Carolina, LLC (DEC) and Duke Energy Progress, LLC (DEP, and together with DEC, Duke), City of Charlotte, NCJC, NCHC, Sierra Club, SACE, Tech Customers, and CUCA filed proposed rules and initial comments. On that same date, Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (DENC), filed a letter in lieu of initial comments.

On December 17, 2021, the Public Staff, AGO, CUCA, Duke, NCSEA, NCEMC, DENC, SACE, CIGFUR, and Tech Customers filed reply comments. Also on that same

date, CIGFUR, CUCA, NCSEA, NCJC, NCHC, Sierra Club, and SACE (Joint Intervenors) filed joint reply comments.

On December 30, 2021, the Commission issued an Order Granting, In Part, Motion for Leave allowing the parties to file supplemental reply comments.

On January 5, 2022, Joint Intervenors filed joint supplemental reply comments. Also on that date, DENC, AGO, Duke, and the Public Staff filed supplemental reply comments.

After careful consideration of the initial comments and proposed rules, reply and supplemental comments, the Commission adopts Commission Rule R1-17B, attached to this Order as Appendix A. The balance of this Order discusses the major issues raised by the parties in their comments and provides the Commission's decision relative to those issues.

Issue 1: Structure of Rule and Defined Terms

In its initial comments, Duke proposes to place the rule outlining requirements for a utility to file an application for approval of a PBR (PBR Application) in Commission Rule R1-17, the Commission Rule that outlines the requirements for general rate cases. Duke notes that the PBR Statute requires a utility to file a request for a PBR in a general rate case proceeding. In its initial comments, CUCA also proposes placing the PBR rule in Commission Rule R1-17.

In its initial comments, the Public Staff includes its proposed rule in Chapter 8 of the Commission's Rules, which contains the rules related to electric public utilities. In its reply comments, the Public Staff notes that several parties include their proposed rule as a revision to Commission Rule R1-17. The Public Staff states that it is preferable to include the PBR rule in Chapter 8, as Commission Rule R1-17 is "already long and unwieldy."

The Commission agrees with the Public Staff that including the provisions related to implementation of the PBR Statute in Commission Rule R1-17 would make that rule excessively long and unwieldy. However, the Commission disagrees that the rules implementing the PBR Statute should be included in Chapter 8 of the Commission rules. The Commission is creating a new Rule, Commission Rule R1-17B (PBR Rule), in Chapter 1 of its Rules to appropriately place the rules implementing the PBR Statute alongside the rules for the filing of general rate cases and the establishment of base rates. The PBR Statute requires that utilities include an application for a PBR in a general rate case proceeding.

Multiple parties suggest definitions of terms used in their proposed rules. Many of these proposed definitions reiterate the definitions in the PBR Statute. Some of the suggested definitions make substantive changes to the definitions in the PBR Statute. For example, NCSEA proposed a modification to the definition of "Distributed Energy

Resource (DER)” to allow that emerging technologies may also be considered DERs. The Commission is not persuaded at this time that there is a need to deviate from the definitions as provided in the PBR Statute for most terms. To the extent terms defined in the PBR Statute are used in the PBR Rule, the Commission incorporates the statutory definition in its Rule. Therefore, the terms “Cost Causation Principle”; “Decoupling Ratemaking Mechanism”; “Earnings Sharing Mechanism”; “Multiyear Rate Plan” or “MYRP”; “Performance Incentive Mechanism” or “PIM”; “Performance-Based Regulation” or “PBR”; “Policy Goal”; and “Tracking Metric” as used in the Commission’s PBR Rule shall have the same definition as the PBR Statute.

Other than these terms, the Commission Rule provides two additional definitions. The Commission adopts a definition for the term “Plan Period” as “the period of not more than 36 months covered by an approved PBR Application.” This Commission finds that this language is consistent with the PBR Statute as it is taken from subsection (f) of the PBR Statute. The Commission adopts a definition for the term “Rate Year” as each 12-month period of the MYRP for which base rates as established by N.C.G.S. § 62-133 and modified by N.C.G.S. § 62-133.16, are effective. The Commission definition of the term differs from the definition in the PBR Statute in that the definition adopted by the Commission clarifies that the term Rate Year applies to each year of a MYRP. This definition is consistent with the proposed definition of the Public Staff.

Issue 2: Further Proceedings

Several intervenors propose strategies for the Commission to employ to facilitate and manage implementation of PBR including the implementation of additional dockets and delaying the consideration of a PBR Application until certain other Commission proceedings are resolved. In general, in its reply comments, Duke argues that HB 951 does not empower the Commission to legislate what intervenors perceive as missed opportunities or policy shortcomings in HB 951. Duke argues that the Commission should reject any requests that effectively override the PBR Statute, contradict the policy framework established by the General Assembly, or go beyond the actions authorized by HB 951. Duke asserts that the PBR Statute does not contemplate multiple proceedings in multiple dockets to determine policy goals and capital spending projects before PBR filings; rather, those determinations are to be made by the Commission in the general rate case proceeding evaluating a PBR Application. Duke further asserts that under the statute a utility can file a notice of intent to file a PBR Application once the rules implemented in this docket are effective.

Proposed Additional Dockets to be Initiated by the Commission

A proposal, with some variations, from several intervenors is that the Commission initiate a separate “policy docket” that would occur periodically wherein the Commission would set policy goals that the utilities would target in developing proposed PIMs.

The Public Staff states in its initial comments that a PBR proceeding will require a more rigorous and resource intensive review than would a traditional rate case,

particularly with the forward-looking element and the establishment of PIMs, but that the statute requires that it be decided in the same time frame as a traditional rate case. The Public Staff proposes a process for the Commission to periodically set policy goals that utilities would target in proposing their PIMs. The Public Staff proposes that by April 1, 2022, and at least every three years thereafter, interested parties may propose policy goals in a generic docket that the Commission would initiate to set policy goals that utilities may target with a PIM in a MYRP.

In its reply comments, the Public Staff clarifies that its proposed policy goal docket would not be used to set PIMs, performance and tracking metrics, in contrast to proposals other parties make. The Public Staff proposes that adoption of PIMs and any performance and tracking metrics would occur in an individual utility's PBR proceeding. The Public Staff maintains that Duke's proposed rule does not set out a procedure for the Commission to set policy goals on which the utility may base one or more PIMs, despite the PBR Statute including "standards the Commission has established by order prior to and independent of a PBR Application" as benchmarks for adopting "Policy Goals." The Public Staff asserts that it is appropriate for the Commission to have an opportunity to prescribe its current policy goals in an order issued before the filing of a PBR Application, as opposed to the utility relying on standards adopted by an earlier Commission in past proceedings, which may be stale or irrelevant to today's circumstances.

NCSEA, in its initial comments, also recommends that the Commission establish a separate docket (Policy Consideration Docket), six months before the filing of a PBR Application, to determine policy goals, PIMs, and tracking metrics for that particular PBR Application. NCSEA emphasizes that the PBR Statute does not prohibit intervenors from recommending performance and tracking metrics, which it contends should be proposed, debated, and decided in the Policy Consideration Docket. NCSEA notes the requirement in N.C.G.S. § 62-133.16(d)(1) that the Commission approve a PBR Application "only upon a finding that a proposed PBR would result in just and reasonable rates, is in the public interest, and is consistent with the criteria established in this section and rules adopted thereunder." NCSEA also asserts that subsection (d) of the PBR Statute identifies policy goals that the Commission should consider and addresses procedural matters related to the review of a PBR Application, but it does not require that the policy goals be set in a rule. Since policy goals will evolve over time and may vary from one PBR case to another, NCSEA suggests that its proposed Policy Consideration Docket would be the vehicle to establish the criteria used to evaluate a PBR Application under N.C.G.S. § 62-133.16(j)(2), which requires that the rules implementing N.C.G.S. § 62-133.16 include the criteria for evaluating a PBR Application. Having a Policy Consideration Docket before each PBR Application, NCSEA argues, will ensure that the policy objectives governing an application and plan period are as up to date as possible and would provide certainty to stakeholders about procedural logistics, making it less likely that parties would file petitions for rulemaking to change PIMs, policy goals, or performance and tracking metrics during the pendency of a PBR Plan Period.

NCSEA, in its reply comments, continues to advocate for the Commission addressing policy issues in a separate proceeding. However, in the interest of

compromise, in its Joint Proposed Rule, NCSEA supports the Commission deciding only policy goals in a generic docket and addressing PIMs and tracking metrics in the PBR Application proceeding. NCSEA states that this will allow the Commission to customize and adapt PIMs and tracking metrics to fit the needs of individual utilities in their PBR Application proceedings. NCSEA agrees with CIGFUR and CUCA that PIMs should incentivize behavior beyond what is already required by other regulations or standards. NCSEA further argues that the Commission's rules must require that detailed tracking and performance metrics tailored to each PIM be included in any PBR Application, and that reporting pursuant to such metrics should be publicly filed and available for review by stakeholders.

In its reply comments, NCJC et al. recommend that the Commission adopt the Public Staff's proposed Policy Docket and order that PBR Applications include certain required PIMs to encourage achievement of key policy goals.

Tech Customers, in reply comments, also support the Public Staff's proposal to create a separate policy docket. Tech Customers assert that this would accomplish two important objectives by allowing sufficient time for discovery and consideration of suggested policy goals, and by creating an opportunity for the Commission to approve policy goals that Duke must incorporate into proposed PIMs. Tech Customers argue that Duke's proposal that the utilities have discretion over how many and which PIMs to include in their PBR Applications gives the utilities heavy influence over the policy goals to which they will be held accountable.

CIGFUR interprets N.C.G.S. § 62-133.16(c)(1)(a) to require Commission pre-approval of capital investments before the utility may recover the costs of the same through a MYRP. CIGFUR asserts that these decisions will require contested proceedings and evidentiary hearings, and discovery and cross-examination. According to CIGFUR, several issues of fact and law related to the pre-approved capital expenditure list are likely to overlap with and be linked to the MYRP for which the utility will seek approval as part of a general rate case filed with an application for PBR. Therefore, CIGFUR recommends that the list of pre-approved capital expenditures be added to the list of contested issues that the Commission will decide in its order deciding a general rate case filed with an application for PBR. If the Commission instead envisions a capital expenditure pre-approval process occurring separate and apart from, or before, a proceeding on the utility's application for a general rate case that includes a PBR Application, CIGFUR recommends that the Commission adopt a rule governing the process for obtaining pre-approval.

NCSEA, in both its initial and reply comments, also recommends a separate proceeding to authorize a utility's capital investments before the filing of a PBR Application. NCSEA argues this is required by the PBR Statute and urges that the Commission's rules include a docketed proceeding that must be initiated at least six months before the filing of a PBR Application. The proceeding could incorporate the technical conference process required by N.C.G.S. § 62-133.16(j)(3) or could be integrated into the Commission proceeding to reduce emissions of carbon dioxide in

Section 1 of S.L. 2021-165 (Carbon Plan) or the Integrated Resource Plan (IRP) process. NCSEA opines that the best option would be to incorporate authorization of capital investments into the Carbon Plan process, which requires that transmission and distribution investments, such as those that will be recovered by the utilities via the MYRP component of the PBR, be a part of the “least cost path” to achieve the requirements of the Carbon Plan. This process would create a logical, cyclical order for identifying the least cost planning scenarios that include all the resources and innovations that the Commission must consider in developing a least cost, reliable grid that reduces carbon emissions by 70% by 2030.

NCSEA states that the criteria for the Commission’s authorization of capital investments should also be set forth in the Commission’s rules implementing N.C.G.S. § 62-133.16. The Commission’s rules should examine how the investments are targeted to achieve the PIMs that the Commission will set in the Policy Consideration Docket, should include information about how the investments are targeted to help achieve the requirements of the Carbon Plan, should include information about how the investments support the ownership of solar generation by independent power producers as required by Section 1(2)(b) of HB 951, should demonstrate how the investments are informed by the Integrated Systems Operations Planning (ISOP) process, and demonstrate how the investments relieve congestion on the grid.

NCJC et al., in their initial comments, recommend a supplemental rulemaking process to establish PIMs relating to low-income affordability following the recommendations of the Affordability Collaborative or other viable low-income proposals brought before the Commission. NCJC, et al. assert that because of the complexity of PBR and the interplay of PBR with the technical conference regarding projected transmission and distribution expenditures, the Carbon Plan, and the Affordability Collaborative the Commission should commit to a supplemental rulemaking proceeding to continue after February 10, 2022, before accepting an application for a MYRP. The parties also recommend that, because of the technical details required and the need for information about the utilities’ accounting and administrative processes, the Commission delegate the responsibility for drafting some of the initial rules to the utilities, with opportunities for comments and proposed revisions from intervenors. CIGFUR, in reply comments, expresses support for the supplemental PBR rulemaking process after February 10, 2022, that NCJC et al. propose. In their reply comments, NCJC et al., support the idea of a separate docket to establish policy goals that would form the basis of PIMs to be included in a PBR Application, but they also urge the Commission to establish by order specific required PIMs that a utility would need to include in its PBR Application.

The AGO, in its reply comments, supports the Public Staff’s proposal of a separate proceeding for establishing policy goals, stating that established policy goals and outcomes should be at the heart of performance-based ratemaking. The AGO recommends expanding the review of goals and other structures that guide PBR on an ongoing basis. The AGO envisions that PIMs would reflect just one element of a PBR regulatory framework that should encourage exemplary utility performance and align

utility financial incentives with customer interests. The AGO avers that it is important that there be a separate proceeding to set policy goals and regulatory outcomes against which utility performance can be measured, because the rulemaking timeline outlined in HB 951 provides insufficient time for the Commission and parties to thoughtfully establish policy parameters that guide and inform the implementation of PBR in a manner consistent with the public interest. Similarly, the timeline triggered when a utility submits a PBR Application is too short to develop effective goals and outcomes while also evaluating proposed capital investments and making the design decisions required in proposed alternative regulatory mechanisms.

The AGO, in reply comments, also supports a separate proceeding to identify optimal investment projects for a PBR Plan, such as in conjunction with the development of the Carbon Plan or the IRPs, before a utility submits its PBR Application. Even after development of the Carbon Plan, it will be necessary to ensure that IRP proceedings are rationally linked to capital investments proposed in a utility's MYRP as part of a PBR Application. Also, the Commission and parties must have an opportunity to review proposed capital investments before a utility files a PBR Application and proposed MYRP. The 300-day timeline governing the PBR Application review and approval process will not allow time to unpack all the elements of a PBR Application. The AGO recommends that the Commission require utilities to submit, with their IRP and Carbon Plan filings, a detailed capital investment plan for those projects that would be eligible and authorized for inclusion in a later PBR Application and proposed MYRP.

In its reply comments, Duke opposes the suggestions of the Public Staff and NCSEA that the Commission open a separate docket to consider policy goals and PIMs before a PBR Application filing, stating that such a docket is unnecessary and would result in delay, wasted resources, and needless complexity. Moreover, Duke asserts that the PBR Statute does not require or even contemplate a distinct policy goals proceeding; layering on additional proceedings beyond what is required by the PBR Statute is inefficient and a waste of the Commission's and the parties' time and resources. Duke maintains that the PBR Statute establishes initial policy goals and principles that should guide PBR implementation. To the extent that the parties wish to propose, and the Commission wishes to consider, policy goals and objectives in addition to those outlined in the PBR Statute, they may do so in a PBR rate case. Duke agrees that parties other than the utilities can propose performance and tracking metrics; however, it asserts that the proper venue for such proposals is a rate case docket after a PBR Application has been filed. Duke contends that the initial policy goals established by the PBR Statute, coupled with existing Commission policy, provide a solid foundation for initiating the PBR process without an independent docket.

Duke maintains that a rule prohibiting utilities from employing PBR mechanisms until the Commission and stakeholders establish and deliberate additional policy issues in a separate docket extends beyond the text, purpose, and intent behind the PBR Statute. They state that NCSEA argues that N.C.G.S. § 62-133.16(a)(8) anticipates that policy goals may be set by the Commission "prior to and independent of" a PBR Application. However, Duke argues that when read in context, that section does not

support NCSEA’s argument. N.C.G.S. § 62-133.16(a)(8) defines “Policy Goal,” in relevant part, as “an 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.” Duke asserts that what this means is that the policy goal must be greater than that which is already required by an existing Commission order in an unrelated docket – not that the Commission must establish a separate docket to pre-establish – policy goals. It argues that to read it the way NCSEA suggests would make no sense – why would a policy goal have to be greater than what the Commission just established immediately prior to a PBR Application? Duke maintains that the actual language, when read in context with the “greater than” language, merely establishes that a utility should not be rewarded for meeting an existing standard that it is already required to meet – whether that standard is in a law, regulation, or prior Commission order.

Duke states that NCSEA also cites the Hawaii PBR development process as an example supporting its recommendation of a Policy Consideration Docket. Duke asserts that the Hawaii legislature implemented a multiyear process for establishing policy goals and debating PBR framework issues. However, Duke notes that the North Carolina General Assembly neither took such action nor authorized this Commission to do so. Instead, the PBR Statute includes specific timelines and targeted deadlines for PBR implementation. Duke comments that the PBR Statute tasks the Commission with implementing a North Carolina statute passed by the North Carolina General Assembly. They note that Hawaii already had MYRPs and limited PIMs in place for years before initiating the referenced process to establish policy goals, so Hawaii’s example does not support NCSEA’s proposal that a Policy Consideration Docket be held before any MYRP or PIM can be implemented. Duke argues that in North Carolina, PIMs should not be set in a separate docket but are intended to be evaluated as part of the PBR Application. Duke reiterates in its supplemental reply comments its view that having a separate policy goals proceeding will not lead to the best outcome, as it does not allow the Commission to review policy goals and PIMs in the context of the specific utility and the specific rate request.

In its supplemental reply comments, Duke refutes the AGO’s arguments and proposals with respect to a separate proceeding to determine policy goals. Duke argues that the separate proceedings advocated by the AGO are an attempt to negate the 300-day timeframe by splitting off individual pieces of a PBR rate case that must be concluded before a utility may file its PBR Application. In Duke’s view, this is a delay tactic in conflict with the PBR Statute.

Staggered Scheduling of PBR Cases

In its initial comments, the Public Staff expresses concern about the timing of PBR rate cases among the three investor-owned electric public utilities. In the past two Duke rate case cycles, the Public Staff has found the workload excessive when rate cases are “pancaked,” and other dockets were often delayed to prioritize rate case investigations.

The Public Staff asserts that the required annual review process for each utility's MYRP also adds complexities. The Public Staff states that development of the Carbon Plan, various other rulemakings and proceedings for customer programs, CPCN applications, and potential new competitive resource procurements pursuant to the Carbon Reduction Plan are upcoming, and that it is in the best interest of the Commission, all parties, and ratepayers for there to be adequate time for intervenors to review filings and for the Public Staff to thoroughly investigate each rate case.

The Public Staff proposes that each investor-owned electric public utility file its initial PBR rate case in a designated three-year cycle. With the notice of technical conference (discussed below) and the suspension of rates, each rate case will likely take a year to complete. If a case is filed every three years for a three-year MYRP, the Commission could align the utilities by requiring that each file its MYRP rate case in a designated year, which would also allow the Commission to schedule the technical conference, evidentiary, and public hearings at a predictable time each year. According to the Public Staff, this schedule should be flexible and open to modification given the utilities' right to file a rate case if they are underearning. Therefore, the Public Staff asserts, the schedule should be set out in a Commission order rather than in the MYRP/PBR Rule and updated by the Commission by motion of any of the parties to this docket. The Public Staff believes the Commission has the authority to schedule the timing of proceedings, including the timing of an initial application, pursuant to the rulemaking provision of N.C.G.S. § 62-133.16(j)(1). Under the Public Staff's proposal, the utility would not be limited by this schedule in its right to file an application for a traditional rate case pursuant to N.C.G.S. § 62-133.

The Public Staff notes in its reply comments that nothing in Duke's proposed rule would prevent two or even all three utilities from filing rate cases at the same time. The Public Staff continues to support its proposal that the utilities be required to file rate cases in a designated year if filing their general rate cases with PBR Applications. The Public Staff believes that the administrative efficiency Duke cites as a benefit of these alternative ratemaking mechanisms can best be achieved by setting a predictable schedule for rate cases filed with PBR Applications for the three investor-owned utilities rather than allowing the utilities themselves to dictate the schedule.

CIGFUR also recommends that the Commission consider requiring the electric utilities to stagger their PBR Application filings to allow for timely Commission decisions with procedural fairness for all parties. Some states have implemented "rate case plans" (RCPs) that require that rate case filings be staggered to reduce the chance that a regulatory body is considering rate cases for several large utilities simultaneously. CIGFUR states that a general rate case with a PBR Application will be large and will involve many more complex and contested issues than traditional rate cases. CIGFUR asserts that an RCP (or something similar) would be a "check and balance" on the investor-owned public utilities, which have many human, professional, and financial resources to deploy when litigating "pancaked" rate cases, while intervenors are more resource-constrained. CIGFUR proposes a rule that would prohibit a utility from filing a notice of intent to file a rate case containing a PBR Application if another such case has

been filed by another electric public utility within 180 days immediately preceding the notice of intent. CIGFUR asserts that the Commission has the authority to adopt such a rule pursuant to N.C.G.S. § 62-133.16(j)(1) and (2). CIGFUR also refers to Commission Rules R8-55(b) and (c), which stagger the hearings and the test periods for the hearings for cost of fuel and fuel-related cost adjustments, as being analogous to CIGFUR's proposed rule. CIGFUR argues that the same reasons that the Commission adopted those rules to ensure that public utilities' fuel rider proceedings occur on a staggered schedule would apply here. In its reply comments, CIGFUR supports the Public Staff's proposal that the Commission set a schedule requiring each public utility, if the utility files a general rate case which includes a PBR Application, to do so in a designated year.

NCSEA, in its reply comments, supports the Public Staff's proposed schedule for PBR rate case filings. NCSEA concurs with CIGFUR and the Public Staff that the Commission should avoid PBR rate cases being stacked and believes that the Public Staff's proposed schedule will accomplish that objective. Tech Customers, in their reply comments, agree with CIGFUR and the Public Staff that the filing of PBR Applications by utilities should be staggered to enable the Commission, the Public Staff, and intervenors to thoroughly review the applications.

Duke argues in its reply comments that the Public Staff's suggested staggered schedule for PBR rate cases is not supported by the PBR Statute and would likely result in the utilities filing additional traditional rate cases. Duke opposes CIGFUR's suggestion that there be a requirement that utilities stagger their PBR Application filings by adopting a rule that a utility cannot file a notice of intent to file a PBR Application if another utility has filed a PBR Application within the previous 180 days. Duke contends that there is no basis in the PBR Statute for such a requirement and it is not realistic because a utility cannot control the timing of other companies' financial needs. The idea, if implemented, could lead to an increased workload because a utility unable to file a PBR Application may be forced to file a rate case without a PBR if its rates are insufficient, and then six months later file another rate case with a PBR Application. The PBR process is intended to reduce rate cases and increase regulatory efficiencies, and, according to Duke, CIGFUR's proposal could result in the opposite.

DENC, in its reply comments and supplemental reply comments, also opposes proposals to prescribe a schedule for utilities to bring PBR rate cases to the Commission, arguing that this would result in utilities filing additional traditional rate cases which would counter the interests of efficiency and resource allocation. If an underearning utility needs to bring a PBR case to the Commission but cannot because of the schedule, it can still file a traditional rate case, meaning that all parties are forced to manage more rather than fewer rate cases. DENC raises additional practical considerations with the Public Staff's suggested staggered schedule. If a utility does not file a PBR case in its prescribed year, does it lose its place in the lineup? Regarding CIGFUR's proposal, what happens if two utilities file a rate case on the 181st day after the third utility filed its own case? In DENC's view, the staggered schedule proposals present more administrative burdens than they would solve.

Affordability Collaborative

NCJC et al. recommend in their initial and reply comments, and their proposed rules reflect, a requirement that any MYRP application include the utilities' analysis of a PIM related to reducing low-income energy burdens. Also, they request that the Commission include in its PBR rule a prohibition on Duke filing a general rate case or PBR Application until the Commission has received the final report and recommendations of the Affordability Stakeholder working group, which are due on July 27, 2022. The key outcome of the Affordability Stakeholder process should be program recommendations to benefit low-income ratepayers for ultimate Commission consideration, as ordered by the Commission in the DEC Rate Case Order, Docket No. E-7, Sub 1214 (Mar. 31, 2021), which requires consideration of the recommendations of the Affordability Collaborative before Duke's next general rate case. NCJC et al. argue that, without the proposed requirement, Duke will not be able to propose affordable rate designs or other program recommendations that come out of the collaborative as part of any MYRP application or general rate case.

NCSEA, in its reply comments, agrees with NCJC et al. that the Commission's orders in Duke's recent rate cases make clear that Duke is not to file a rate case application until the Affordability Collaborative completes its work.

Duke opposes the NCJC et al. proposed rule that utilities cannot submit a PBR Application until after the Affordability Collaborative issues a final report and recommendations to the Commission, stating that the legislation does not support such a rule and that the Affordability Collaborative could develop proposals that would not be appropriate as PIMs. In Duke's view, the legislature established timelines for PBR implementation, and the Commission should reject requests that ignore those timelines in anticipation of outcomes in separate regulatory proceedings.

Carbon Plan

NCJC et al., in both their initial and reply comments, advocate for a requirement that the Carbon Plan under Part 1 of HB 951 be completed before consideration of a MYRP. This requirement would ensure that capital expenditures contemplated by utilities in association with a MYRP are not at cross-purposes with carbon reduction targets mandated in the legislation.

NCSEA states that HB 951 does not dictate that the utilities be allowed to file PBR Applications on February 10, 2022, and argues in its initial and reply comments that the Commission's rules should prohibit Duke from filing a PBR Application before January 1, 2023, in order for the capital investments approved for recovery in a PBR to be informed by the Carbon Plan. NCSEA does not propose any restrictions on Duke's ability to file general rate case applications during 2022. Further, NCSEA states in its reply comments that the Public Staff's proposed staggered schedule addresses NCSEA's concern that a PBR Application by Duke before completion of the Carbon Plan could lead to a significant

and costly disconnect between the capital investments proposed in the PBR Application and those found to be appropriate in the Carbon Plan proceeding.

CIGFUR, in reply comments, also agrees with NCSEA that Duke should not be allowed to file a PBR Application until after the Carbon Plan is developed on or before December 31, 2022. CIGFUR argues that the Commission's approving a list of capital spending projects before the initial Carbon Plan is developed would undermine the legislature's intent to have the Carbon Plan inform the capital spending plan approved as part of a MYRP. Further, CIGFUR argues, supplementing the PBR Application after the Carbon Plan is developed will reduce intervenors' ability to review, conduct discovery, and potentially challenge the utility's spending plans.

In reply comments, the AGO argues that the mechanisms authorized in the PBR Statute should be used to help advance the carbon policy. The AGO recommends adding specific provisions in the PBR rule to prioritize performance-based ratemaking proposals that are optimal in timing, generation, and resource mix for advancement of the Carbon Plan and effective for IRP purposes. In its supplemental reply comments, the AGO notes that the Commission is directed in subpart (4) of HB 951 Part 1, Section 1, to "retain discretion to determine optimal timing and generation and resource-mix to achieve the least cost path to compliance with the authorized carbon reduction goals..." The AGO supports coordination between the use of PBR and the advancement of carbon policies.

In supplemental reply comments, DENC asserts that the AGO's recommendations would complicate and lengthen the PBR ratemaking process and expand the scope of this new construct beyond the parameters of HB 951. To any extent that the AGO's recommendation that the PBR rule prioritize PBR proposals that are optimal in timing, generation, and resource mix for advancement of Duke's Carbon Plan and effective for IRP purposes is intended to apply to DENC, DENC opposes it.

The Public Staff, in reply comments, agrees that if Duke were to file a rate case in the next 12 months with a capital expenditure plan that varied significantly from the Carbon Plan it would be a further waste of the parties' resources. The Public Staff would be required to investigate the rate case applications filed by Duke while proposing potentially very different recommendations in the Carbon Plan docket. Also, the Public Staff asserts that the technical conference required by N.C.G.S. § 62-133.16(j)(3) to address transmission and distribution issues would be meaningless without the actual approved generation plan. The Public Staff, in addition to its proposed three-year cycle, recommends that the Commission prohibit Duke from filing a general rate case with a PBR Application until adoption of the Carbon Plan. The Public Staff notes that its proposed schedule assumes that, if the Commission decides to establish policy goals in a separate docket (as the Public Staff also recommends), those goals would be approved by the Commission before the end of 2022.

In reply comments, Duke contends that the legislation does not require approval of a Carbon Plan before the filing of a PBR Application.

In supplemental reply comments, DENC argues that the Public Staff's new (in reply comments) recommendation that Duke be prohibited from filing a PBR Application until the Carbon Plan is adopted, combined with the Public Staff's proposed schedule, would mean that DENC would first file notice of a technical conference in 2025.

Other Proposals

The AGO, in its reply comments argues that consistent with best practices and lessons learned from other leading jurisdictions, along with the vision outlined by the PBR Statute, the Commission should work with parties and stakeholders to establish a goals-outcomes framework that can serve as an analytical lens that will help the Commission to: (1) evaluate a utility's PBR Application, including whether it advances those policy goals and regulatory outcomes deemed most valuable to the State and its utility customers; (2) shape and inform a utility's proposed PIMs consistent with the PBR Statute's requirement that each PIM target a clearly defined policy goal; and (3) assess a utility's performance over the life of an approved PBR Plan to determine whether the PBR Plan has delivered achievement against the Commission -established goals and outcomes. The AGO suggests that the Commission establish this goals-outcomes hierarchy prior to approval and for evaluation of a utility's performance during the life of a PBR Plan. The AGO notes that this two-level hierarchy begins with identifying broad regulatory goals, which inform desired regulatory outcomes. The AGO asserts that the goals-outcomes hierarchy, in turn, informs possible performance metrics along a pathway toward a PIM or scorecard development.

In its supplemental reply comments, Duke states that the "goals-outcome hierarchy" proposed by the AGO is a needlessly complex process involving flow charts, foundational frameworks, complicated scorecards, and a published list of pre-approved goals and outcomes. Duke argues that the AGO's recommendation would constrain the parties and the Commission with an overly rigid framework that would prolong the proceedings and rob the parties and Commission of the flexibility needed to take a thoughtful and measured approach to PBR implementation.

According to the AGO's supplemental reply comments, Duke opposes a thoughtful, deliberative process for developing goals, outcomes, and metrics as a foundation of PBR, or for identifying investment projects that will be eligible for cost recovery in the MYRPs based on forecasts and estimated in-service dates. Duke also proposes light review of its PBR mechanisms. Duke's approach would make it hard to evaluate Duke's PBR proposals. The AGO suggests that Duke's aim is to use PBR as a vehicle for frequent rate increases and minimal Commission oversight.

In general, in its reply comments, Duke argues that HB 951 does not empower the Commission to legislate what intervenors perceive as missed opportunities or policy shortcomings in HB 951.

Although the Commission shares some of the concerns of the intervenors, at this time, the Commission declines to include provisions in its PBR Rule adopting the proposal

that a separate docket for the examination of policy goals be initiated and concluded prior the filing of a PBR Application. The Commission agrees with Duke's assertion that the intent of the PBR Statute is to provide electric utilities the opportunity to file a PBR Application as soon as the rules implementing the PBR Statute are adopted. Further, the Commission finds some merit to the argument that divorcing policy goals from a utility's rate case into a one-size-fits all approach may not lead to the best result. However, the Commission may choose to initiate dockets to set policy goals for PBRs if it determines in the future that such dockets would be useful.

For these same reasons, the Commission will not adopt a rule that prohibits the filing of a PBR Application prior to the conclusion of other Commission proceedings including the Affordability Collaborative and the Carbon Plan. Although an electric utility is permitted to file a PBR Application as soon as Commission Rule R1-17B is approved, the timeline for the PBR process illustrates that a rate case with a PBR Application could not be addressed in a Commission order until at least the first quarter of 2023. If an electric utility were to file its PBR Application prior to the resolution of a Commission docket applicable to that utility, it does so at its own risk. While that utility will not have the benefit of knowing the outcome of other dockets applicable to it prior to filing its PBR Application, the Commission will know the outcome prior to its approval of the PBR Application. It is unlikely that the Commission will approve a PBR Application that directly conflicts with a Commission order in another docket.

The Commission also declines at this time to include in its PBR Rule the Public Staff's proposed staggered schedule for the three investor-owned public utilities to file rate cases with PBR Applications, or CIGFUR's proposed rule that also has the effect of staggering and spreading out rate cases with PBR Applications. The Commission shares the concerns of the Public Staff and other intervenors that this new PBR process threatens to test the resources of all involved. However, the Commission finds there is insufficient evidence at this time to develop a rule that would require staggered filing of PBR Applications. As this process evolves, the Commission is open to exploring these avenues if necessary.

Many ideas suggested by the parties cannot be fully developed and evaluated in the limited time allowed by statute for the Commission to adopt the initial PBR Rule. However, the Commission may choose to institute supplemental rulemaking proceedings to develop additional rules for PBR Applications after February 10, 2022. While a utility may file a PBR Application under the approved PBR Rule, 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.

Issue 3: Technical Conference

In its proposed rule included with its initial comments, Duke proposes that the utility provide certain information for each transmission and distribution (T&D) capital project before the technical conference, including the project description, project justification, and estimated costs and in service dates. Duke's proposed rule reiterates the PBR Statute

requirement that other parties be allowed to provide comment and feedback but does not allow cross examination of witnesses. Duke's proposed rule also requires that the technical conference process not exceed 60 days from the date the utility requests the conference.

Duke does not amend its proposed rule regarding the technical conference in its reply comments but comments on the other parties' proposals. Duke asserts that interested parties should not be able to conduct discovery during the technical conference process. Duke states that the technical conference is intended to provide information to the Commission and other parties, but not to function as an evidentiary hearing. Duke further argues that the technical conference itself is a preview of the PBR Application the utility will file and functions as discovery itself. Duke further notes that the period of the technical conference corresponds with the time a utility would be preparing its rate case and PBR Application filing, and that discovery would be unduly burdensome during that time.

The Public Staff includes parameters for a technical conference in its initial comments and proposed rule. The Public Staff proposed rule requires that a utility file a request for a technical conference 90 days before providing notice that it intends to file a general rate case that includes a PBR Application. The rule further provides that other parties that wish to participate in the technical conference should file notice with the Commission five days before the technical conference. The Public Staff rule would require that the utility provide specific information on projected T&D projects including the list of projects, cost benefit analyses or other justification for the projects, explanation for how the projects advance system efficiency or reliability, and the projected cost of each project.

In its reply comments, the Public Staff revises its proposals for the technical conference. It revises its recommendation for the minimum number of days for a utility to request a technical conference to 120 days (from 90 days) before filing its intent to file a rate case. The Public Staff also revises its proposed rule to remove the requirement that a utility file a cost benefit analysis for a project proposed in the technical conference if the project is required by external law. The Public Staff does not request that parties be able to file discovery during the technical conference period but does require that the utility file information and presentations for the technical conference at least ten days before the technical conference. The Joint Parties' Joint Proposed Rule, submitted with their joint reply comments, makes several revisions to the Public Staff's proposed rule on the technical conference and provides several specific requirements for the technical conference. The Joint Proposed Rule recommends that the technical conference consist of two phases, with the second phase being scheduled no less than 30 days after the first phase. The Joint Proposed Rule provides that interested parties will have at least one hour during the second phase of the technical conference to make presentations. The Joint Proposed Rule also provides a list of specific information the utility must provide in the first phase of the technical conference for all capital spending projects, where capital spending projects is broadly defined and includes all projects not just T&D projects. The

Joint Proposed Rule also requires that the utility post all information on a “Data Dashboard”, or a publicly accessible location for relevant data.

CIGFUR notes in its initial comments that transparency into the T&D planning process is critical to the implementation of a PBR. CIGFUR recommends that the Commission adopt a rule governing a utility’s request for a technical conference. In addition, CIGFUR recommends that the Commission clarify that discovery is allowed starting when a utility requests a technical conference. CIGFUR further recommends that the utility provide information on how the T&D expenditures are consistent with feedback received from stakeholders in other Commission proceedings and provide detailed information on possible federal funding for the T&D expenditures.

CUCA recommends in its initial comments that a utility request a technical conference at least 60 days before filing a PBR Application. CUCA further recommends that the utility provide specific details on each project, summarize any alternatives to those projects the utility considered, and explain the utility’s load forecasting methodology underlying the investments.

In initial comments NCSEA recommends that the Commission require a utility to file notice of a technical conference in a manner similar to the filing of a notice of general rate case, and that the notice include an explanation of how the T&D expenditures will advance the policies outlined in subsection (d)(2) of the PBR Statute. NCSEA further recommends that other parties be allowed to present information on projected T&D costs and critique the utility’s projected costs. NCSEA requests that the Commission rule require all information presented at the technical conference be filed in the Commission docketing system, in native file format. NCSEA also requests that parties be allowed to conduct discovery related to the technical conference presentations before the technical conference, and that the utility provide detailed information on its planned investments, including supporting data, in a public format. In its reply comments NCSEA reiterates its request that all parties be allowed to present information on projected T&D costs and to critique the utility’s projected costs.

DENC asserts in reply comments that the proposals of other parties regarding the technical conference are outside the scope of the PBR Statute and would unduly burden the utility.

In reply comments, the AGO asserts that the technical conference should not take the place of a thorough review of the PBR. The AGO also recommends that the utility be required to file any documents for the technical conference well in advance.

NCCEMC states in its reply comments that the information Duke proposes to include for T&D projects before the technical conference is insufficient. NCCEMC supports the more detailed information to be provided before the technical conference that the Public Staff proposes. However, NCCEMC states that the description of each project should be expansive and include a discussion of how the project aligns with the utility’s ISOP. NCCEMC also recommends that stakeholders be allowed to provide feedback on the

utility's proposed projects, and requests that all presentations and supporting documents for the technical conference be filed in the Commission docket system.

In reply comments Tech Customers support the Public Staff proposals to allow stakeholder intervention and participation in the technical conference. Tech Customers also recommend that the Commission allow all parties to engage in discovery in all stages of the PBR process, including the technical conference process.

The Commission declines to expand the scope of the technical conference beyond the requirements in the PBR Statute. The PBR Rule adopted by the Commission does not require multiple phases in the technical conference process. However, the PBR Rule provides flexibility to allow one or more sessions of the technical conference to be scheduled. The Commission agrees that an electric public utility must file a request to initiate a technical conference regarding the projected transmission and distribution capital projects to be included in the PBR Application 90 days before giving notice of intent to file a rate case with a PBR Application. As required by the PBR Statute, the technical conference process may not exceed 60 days from the date the utility initiates the process. Therefore, the Commission will schedule the sessions of the technical conference to take place within 60 days of a utility's request to initiate the process.

The Commission agrees with Duke that the technical conference process is intended as a process to provide information, and therefore, allowing parties to engage in discovery during this period is unnecessary. Discovery for a PBR Application can proceed as any other rate case – when the application is filed. The Commission also declines to expand the information provided in the technical conference beyond the requirement of the PBR Statute to provide information on “transmission and distribution expenditures.”

The Commission, at this time, also declines to specify the length of presentations by intervenors at the technical conference, if the Commission allows such presentations. The Commission will enumerate more specific details and processes for the technical conference in the orders scheduling the technical conferences once a proceeding has been initiated.

The Commission also declines to include in the PBR Rule the recommendation of intervenors requiring the use of a mechanism like a Data Dashboard or a separate provision that requires parties to file documents in native file format in the Commission docketing system. The Commission notes that in all proceedings, particularly rate case proceedings, the Commission directs the filing electric public utility to provide workpapers, including native files to all parties in a proceeding. In addition, parties can obtain this information through discovery. While a Data Dashboard appears to be within the scope of what parties working together could use to comply with Commission directives to share data, the Commission declines to limit the avenues of compliance for the sharing of data in the PBR Rule at this time. The Commission also notes that its current docketing system does not support filings in native format. As the Commission transitions to its next

generation electronic filing system, it will provide guidance to the parties regarding any changes to this requirement.

Issue 4: PIMs

Duke notes that its proposed draft rule regarding PIMs provides that an electric public utility must propose at least one PIM that is consistent with the Policy Goals, which the Commission may approve, modify, or reject, and the type of mechanism the utility shall include in proposed PIMs by which to collect or distribute any rewards or penalties. Duke argues that its proposed rule is consistent with the language in the PBR Statute.

Duke proposes that the PBR rule should not include additional requirements beyond what is in the PBR Statute related to PIMs to allow flexibility for a conservative approach during the first several PBR Plans so that the utilities may limit the number of PIMs proposed and identify various tracking metrics to gather and analyze data. Duke argues that a measured and thoughtful approach is important as the electric public utilities and interested stakeholders gain experience and obtain more information about how to best track certain information so that incentives are properly aligned with policy goals and consistently and correctly tracked.

The Public Staff states that a while a PBR rate case will require a more rigorous and resource intensive review than would a traditional rate case, particularly with the forward-looking element and the establishment of PIMs, it is required by the PBR Statute to be decided in the same time frame as a traditional rate case. The Public Staff proposes a separate process for the Commission to periodically set policy goals that utilities would target in proposing their PIMs. In addition, the Public Staff's proposed rule addresses the specific requirements that an electric public utility should meet when it requests approval of a PBR Application, including PIMs.

CIGFUR states that applicable electric public utilities should tailor every PIM they propose so that it provides demonstrable benefits to all classes of ratepayers and the utility shall provide a detailed statement of such anticipated benefits expected to flow to all classes of ratepayers. CIGFUR maintains that, for example, if the policy goal identified by the PIM is to reduce carbon emissions by increasing customer access to carbon-free resources, the utility should tailor the PIM by ratepayer class to ensure that commercial and industrial customers – and not just residential ones – have increased access to carbon-free resources as a result of the PIM. CIGFUR asserts that (using the same example) ways that such a PIM could be designed to benefit commercial and industrial customers specifically could be through including microgrid tariffs, expanding program capacity of existing customer programs like the Green Source Advantage Program, modifying existing net metering policies to allow systems with a nameplate capacity greater than 1 MW to participate, creating new customer programs that allow customers to execute power purchase agreements at virtual power plants, and allowing any interested customer to participate in beta testing of industrial-scale battery storage technology.

CIGFUR reiterates that any PIMs submitted as part of a PBR Application should be structured to ensure that the utility is not incentivized to do what it is already obligated to do under current regulations and industry standards.

CIGFUR recommends that the Commission adopt rules setting forth the process by which it will consider and implement “specific performance metrics and targets against which electric public utility performance is measured” when deciding whether to approve “[t]he policy goal targeted by a PIM.” CIGFUR recommends adoption of such a rule in part because of what could be read as a potential statutory inconsistency between the definition of “performance incentive mechanism” set forth in the PBR Statute and subsection (c) of the PBR Statute, which provides in relevant part that “[t]he PBR application may also include proposed tracking metrics with or without targets or benchmarks to measure electric public utility achievement.” CIGFUR argues that if a PBR Application must contain “one or more PIMs,” and the statutory definition of PIM “includes specific performance metrics and targets against which electric public utility performance is measured,” it follows that the utility’s inclusion of such metrics and targets in its PBR Application should be mandatory, not permissive. CIGFUR suggests that the Commission weigh in on the front end to resolve any uncertainty created by the potential inconsistent reading of these statutory provisions.

As it relates to the benchmarks to be established for PIMs, CIGFUR recommends that the Commission establish at least a few specific across-the-board benchmarks for any and all PIMs that the utility may propose: (1) the extent to which the utility is improving operational and cost efficiency; and (2) the extent to which PIM-related expenses defer or displace capital expenditures such that the utility would ostensibly be “indifferent to whether it meets customer and grid needs through rate-based traditional infrastructure, or through third-party owned DER.” CIGFUR notes that based upon the experiences of other PBR jurisdictions, it recommends that PIMs be narrowly tailored to achieve the intended policy goal and result in greater benefits to all classes of ratepayers than what the utility would or could have produced absent the PIM. CIGFUR asserts that, more broadly, any benchmarks or target metrics utilized in evaluating the utility’s performance should be specific, measurable, achievable, relevant, and time bound.

NCJC, et al. provide partial proposed rules on PIMs. They note that the PIM recommendations in their partial proposed rules relating to DERs, energy efficiency, and reduction in low-income energy burdens are informed by the regulatory guidance from the final PBR Study Group Work Products report. NCJC, et al. state that PIMs typically have four components: (1) regulatory policy goals that specify certain performance areas of interest, as well as objectives for those areas; (2) metrics that provide detailed information about the utility’s operations in the specified areas of interest; (3) targets that reflect performance goals, as measured by the metrics; and (4) financial incentives (rewards and/or penalties) that are based on the utility’s performance relative to the target.

NCJC, et al. endorse two additional PIMs that they maintain would create an opportunity for consumer benefits in the PBR Plan; one targets utility cost reductions and

one protects the existing system reliability. They assert that these consumer-facing PIMs directly serve the goals of “cost-savings, or reliability of electric service” found in sub-subsection (a)(8) of the PBR Statute and are rightfully a common feature of PBR Plans.

NCJC, et al. recommend the establishment of (1) clearly defined goals that can be measured for those PIMs that can be defined now; (2) a supplemental rulemaking process to establish PIMs relating to low-income affordability following the ultimate recommendations of the Affordability Collaborative or other viable low-income proposals brought before the Commission; and (3) an integration of concrete goals for carbon reduction PIMs that will be connected to the carbon reduction plan established pursuant to Part I of HB 951.

NCJC, et al. comment that if the Commission wants the items on the list in sub-subsection (d)(2) of the PBR Statute to be addressed in a utility’s PBR filing, the Commission must affirmatively require it in its rule before utilities assemble their filings. They assert that the most direct way to do this is to require utilities to design and propose PIMs for inclusion in their PBR Plans. They note their partial proposed rules do just that.

In reply comments, Duke states that the PBR Statute establishes initial policy goals and only requires that one PIM be included in a utility MYRP. It asserts that a separate docket to consider policy goals and PIMs in advance of a PBR filing is unnecessary and would result in delay, wasted resources, and needless complexity.

Duke notes that several intervenors imply that PIMs should be set by the Commission in advance and propose rules that lock in detailed guidelines for policy goals and PIMs outside of what is in the PBR Statute. Duke believes it would be appropriate to take a measured and thoughtful approach toward establishing PIMs during the first PBR rate cases. They assert that this is important as utilities, interested stakeholders, and the Commission gain experience and obtain information on best practices for tracking information. Duke states that in addition to PIMs, the PBR Statute allows for a utility to propose tracking metrics (for quantitatively measuring and monitoring outcomes and/or utility performance) that are not tied to financial incentives or rewards. Duke notes that these tracking metrics will provide useful information in evaluating future PIMs. Duke argues that this deliberate approach is essential as utilities and stakeholders tackle novel issues, gain experience with new legislative and regulatory tools, and implement lessons learned. Duke maintains that it also allows the Commission and utilities to adapt as policy goals and objectives change over time. Duke notes that as Pacific Economics Group Research LLC (PEG) points out in its report included with Duke’s reply comments, in many jurisdictions, first generation MYRPs are cautious steps away from traditional ratemaking. They assert that one reason is that many parties to regulation are, at least initially, reluctant to see a utility’s revenue differ very much from its cost of service. Duke states that, nevertheless, plan designs can evolve as the parties gain experience. They note that as PEG succinctly put it, “North Carolina is under no obligation to be in the vanguard of regulatory reform.” See PEG Report at 8.

Duke further notes that several intervenors seem confused by the intersection of demand-side management (DSM), energy efficiency (EE) and PIMs. Duke maintains that the intent of this section is to clarify that DSM/EE cost recovery and incentives are separate from the PBR process and that utilities are not permitted double recovery of incentives related to DSM/EE programs through both the DSM/EE rider and through the PBR PIMs adjustment. Duke asserts that its proposed rule accomplish these objectives.

Duke states that with respect to PIMs, the utility shall include at least one proposed PIM, including the Policy Goal targeted by the PIM, the method of measuring performance, and calculation of the incentive and/or penalty. Duke comments that “Policy Goal(s)” 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 N.C.G.S. § 143B-282, or (iv) the United States Environmental Protection Agency.

Duke asserts that PIMs and the associated Policy Goals should be filed, evaluated, and approved as part of the PBR rate case proceeding.

Duke notes that policy goals and associated PIMs may differ on a case-by-case basis, and the PBR rule should allow them to be tailored to an individual utility; establishing a one-size-fits-all approach and divorcing policy goals from a utility’s rate case, as the Public Staff suggests, would not lead to the best result. Duke asserts that policy goals and the associated PIMs should be considered in the context of a PBR rate case – not before. Duke also asserts that the PBR Statute does not require or even contemplate a distinct proceeding establishing policy goals; layering on additional proceedings beyond what is required by the PBR Statute is inefficient and a waste of the Commission’s and the parties’ time and resources. Duke states that as PEG points out, “Some of the parties’ proposals may inadvertently hamper the Commission’s ability to optimally administer PBR by predetermining results outside of specific MYRP proceedings – the proceedings where the Commission can best assess all aspects of PBR and consider utility-specific factors.” Duke notes that the Public Staff also does not attempt to set predetermined policy goals or PIMs in its proposed rule beyond what is in the statutory language.

Duke states that, in addition, CIGFUR suggests several across-the-board benchmarks for PIMs, including: (1) the extent to which PIM-related expenses defer or displace capital expenditures such that the utility would ostensibly be indifferent to whether it meets customer and grid needs through rate-based traditional infrastructure, or through third-party owned DER; and (2) PIMs should be designed so that they are narrowly tailored to achieve the intended policy goal and result in greater benefits to all classes of ratepayers than what the utility would or could have produced absent the PIM.

Duke asserts that the Commission should not adopt specific guidelines for designing PIMs outside of what is prescribed by statute to preserve flexibility. Duke maintains that it is unclear how a utility would show that it meets these benchmarks. Similarly, Duke notes, CIGFUR contends that each and every PIM should be tailored so that it provides demonstrable benefits to all classes of ratepayers and that the utility be required to provide a detailed statement of such anticipated benefits expected to flow to all classes of ratepayers. Duke states that HB 951 does not contain any requirement that a PIM should benefit all classes and that imposing such a requirement would severely limit Duke's ability to propose PIMs relating to affordability issues, economic development, and other laudable goals. Duke argues that if a certain customer class does not benefit from a PIM, the allocation of the financial impacts of that PIM could exclude that class, such that the class is not impacted; however, there is no reason to prohibit such a PIM altogether. Duke notes that it is recommending rules that allow flexibility and the ability for the Commission and all parties to learn and adapt as policy issues evolve.

Duke notes that under the NCJC et al.'s proposed partial rules, PBR Applications must contain six Commission-required PIMs, including reduction in non-fuel cost per kWh, maintenance of adequate reliability, DER promotion and advancement, accelerated achievement of carbon goals, and EE program deployment improvements (required PIMs). Duke maintains that the NCJC et al.'s proposed rule states that "the utility shall include the specific required PIMs . . . regardless whether the utility supports adoption of these PIMs." Duke argues that rules requiring that PBR Applications include six PIMs covering specific topics contradict the flexible framework established by the General Assembly. Duke states that the PBR Statute requires that PBR Applications include at least one PIM proposal and also outline certain policy and structural requirements for PIM proposals. Duke asserts that as a matter of policy, this flexibility makes sense: HB 951's structure allows both the Commission and the utilities to adapt as policy goals and objectives change over time. Therefore, Duke argues that the Commission should consider the content, propriety, and merit of PIM proposals in each PBR Application. Duke asserts that this less prescriptive approach will facilitate learning and innovation as the Commission and the utilities employ new regulatory tools under this new legislative framework, in contrast with the proscriptive recommendation of the NCJC et al., that would inhibit the Commission's future flexibility.

In its reply comments, Duke continues to recommend its proposed rule as outlined in its initial comments.

In its reply comments, the Public Staff reiterates its proposal to have a separate policy goal docket to set PIMs and performance and tracking metrics. The Public Staff's proposed rule provides that adoption of PIMs and any performance and tracking metrics would occur within an individual utility's PBR proceeding, especially since the utility is required to propose one or more PIMs in its PBR Application.

The Public Staff maintains that Duke's proposed rule does not set out a procedure for the Commission to set policy goals on which the utility may base one or more PIMs, despite the PBR Statute including "standards the Commission has established by order

prior to and independent of a PBR application" as benchmarks for adopting "Policy Goals." The Public Staff asserts that it is appropriate for the Commission to have an opportunity to prescribe its current policy goals in an order issued prior to the filing of a PBR Application, as opposed to the utility relying on standards adopted by an earlier Commission in past proceedings, which may be stale or irrelevant to today's circumstances.

The AGO argues that established policy goals and outcomes should be at the heart of a well-designed framework for performance-based ratemaking. The AGO states that under the framework recommended by the AGO, PIMs would reflect but one element of a broader PBR regulatory framework that, at its core, should encourage exemplary utility performance and better align utility financial incentives with customer interests. The AGO argues that consistent with best practices and lessons learned from other leading jurisdictions, including Hawaii, Minnesota, and Nevada, along with the vision outlined by the PBR Statute, the Commission should work with parties and stakeholders to establish a goals-outcomes framework that can serve as an analytical lens that will help the Commission to: (1) evaluate a utility's PBR Application, including whether it appears able to advance those policy goals and regulatory outcomes deemed most valuable to the State and its utility customers; (2) shape and inform a utility's proposed PIMs consistent with HB 951's requirement that each PIM target a clearly defined policy goal; and (3) assess a utility's performance over the life of an approved PBR Plan to determine whether the PBR Plan has adequately delivered achievement against the Commission-established goals and outcomes.

The AGO comments that a PIM is a metric paired with a performance target and a financial incentive. The AGO notes that PIMs provide financial motivation for utilities to improve performance toward established outcomes or to discourage underperformance. The AGO asserts that through the use of a financial award or penalty, a PIM can more strongly promote achievement of a prioritized outcome than a scorecard or reported metric. The AGO argues that consistent with guidance in HB 951, targets established for PIMs should be clearly tied to state policy goals and regulatory outcomes and should balance the costs of achieving the target with the potential benefits to ratepayers. The AGO states that the net effect of the goals-outcome hierarchy coupled with attendant, well-crafted metrics is a foundational framework that the Commission can establish to inform how it and parties evaluate a utility's PBR Application on the front end and assess the efficacy of a utility's performance under a PBR Plan after the fact.

Tech Customers support the Public Staff's proposal (also found in the Joint Proposed Rule) to create a separate policy docket for stakeholders to investigate and advocate for policy goals that should be incorporated into PIMs. The Tech Customers assert that a separate policy docket will accomplish two important objectives: it will allow sufficient time for discovery and consideration of suggested policy goals; and it will create an opportunity for the Commission to approve policy goals that Duke must incorporate into proposed PIMs. They note that, in contrast, Duke's proposal is that a utility has discretion over how many (and which) PIMs to include in its PBR Application which gives the utility heavy influence over the policy goals to which it will be held accountable.

The Commission does not agree with the comments of NCJC, et al. that the Commission needs to affirmatively require the items in sub-subsection (d)(2) of the PBR Statute be addressed in a utility's PBR filing. The Commission declines to adopt the six required PIMs as outlined by NCJC, et al. in their comments. These items are clearly included in the PBR Statute, and the Commission may consider them when it considers and approves a PBR Application which must include one or more PIMs for each utility. The Commission finds that its decision on PIMs proposed within the context of a PBR Application filed by a utility will be made based on the record in that specific case, and therefore there is no need now for the Commission to adopt rules outlining specific requirements for PIMs or specific PIMs that must be included. This issue is further discussed in Issue 5 – Filing Requirements, herein.

The Commission agrees with Duke that it is not appropriate when crafting a rule to include CIGFUR's recommended across-the-board benchmarks for PIMs. The Commission agrees that it should decline to adopt specific guidelines for designing PIMs outside of what is prescribed by statute in order to preserve flexibility and the ability for the Commission and all parties to learn and adapt as policy issues evolve.

The Commission agrees with the reply comments of Duke that the PBR Statute itself establishes initial policy goals and requires that a minimum of one PIM be included in a utility MYRP. The Commission concludes that it is appropriate to address PIMs holistically when they are established in the course of a specific rate case proceeding involving a PBR Application.

Issue 5: Filing Requirements

In its initial comments, Duke proposes a rule outlining the filing requirements for a PBR Application. Duke's proposed rule reflects that all PBR Applications must conform to the applicable existing rules in Rule R1-17 for an electric public utility filing a request to revise rates. It identifies the specific mechanisms that must be included in a PBR Application, consistent with the PBR Statute, including a decoupling mechanism, at least one PIM, and a MYRP along with an Earnings Sharing Mechanism. It specifies the information that should be submitted to support a PBR Application.

Similarly, the Public Staff proposed a rule governing filing requirements in its initial comments. The Public Staff's proposed rule generally would require significantly more information, and information that is more detailed and granular, from utilities filing a PBR Application than would Duke's proposed rule.

Intervenors, including CIGFUR, CUCA, and NCJC et al., propose various filing requirements including, broadly, information about how a PBR Application complies with the PBR Statute and furthers its policy objectives, information about capital investments, information about the utilities' plans to retire generating plants and the impact on rate base, information on impacts to classes of ratepayers, information on the availability of federal funds to offset projected capital investment, information about the inclusion of stakeholder feedback and recommendations, detailed and granular information about

PIMs, information about how proposed capital expenditures comply with the “least cost” requirements of N.C.G.S. § 62-2(3a) and HB 951, information about how the PBR Application will facilitate the utility’s compliance (in this case, Duke’s compliance) with its Carbon Plan and most recently approved IRP, information regarding how its PBR Application is responsive to the feedback received from stakeholders through all of the currently ongoing stakeholder processes, in addition to the Comprehensive Rate Design Study, disclosures of utility planning processes and cost information, calculation methodologies for key metrics, and information about deviations from cost forecasts.

NCJC et al. also recommend that as part of the PBR Application, utilities be directed to file specific information regarding their decoupling proposals, including certain methods of distributing the decoupling credit or surcharge for the Commission to consider. They assert that decoupling mechanisms allow cost recovery to be shifted towards the volumetric charge as opposed to cost recovery from the fixed customer charge. NCJC et al. emphasize that decoupling adjustments could amplify incentives to customers for saving energy through inclining block rates. NCJC et al. also recommend that the Commission identify which rate classes will be affected by decoupling adjustments and the rationale for including or excluding any rate classes. They also recommend that the Commission ascertain the utility’s plans for customer education regarding the decoupling adjustment. NCJC et al. urge the Commission to adopt a requirement for utilities to consider new rate designs and alternative mechanisms for the decoupling credit that are designed to foster affordability for low-income customers and encourage additional energy efficiency savings.

The AGO opposes any proposal that would exclude estimated EV-related consumption from the calculations for the decoupling mechanism, although the PBR Statute allows the exception. The AGO has several recommendations related to the decoupling mechanism and states that it believes that decoupling shifts considerable risk from the utility to residential customers, and the Commission would shift some risk back to the utility by fixing the fuel costs over the three-year period. The AGO further states that it supports the NCJC et al. suggestion that when decoupling is implemented rates should be designed to either shift cost recovery from the base charge to usage charges or to lower the charge for the initial block of usage.

The Joint Intervenors recommend that in the PBR Application, the applicable electric utility provide supporting information regarding the decoupling mechanism including information on alternative residential rate designs and how the proposed decoupling mechanism will further the policy goal of encouraging energy efficiency.

NCSEA proposes that utilities demonstrate how decoupling has affected the residential class – including the benefits of increased energy efficiency, the energy burden on low-income customers, the equality of rates among customers in the residential class, and whether rate shock has occurred. Duke, in reply comments, states that the Commission’s rules should provide clear guidance and filing requirements for a PBR Application, but the rules should provide enough flexibility to allow the Commission and the parties the leeway to leverage lessons learned efficiently. Duke asserts that its

proposed rule, as provided in their initial comments, strikes the right balance. Duke further states that, aside from the letter of intent and pre-filing request for a technical conference, there should be no pre-filing requirements or proceedings. Duke notes that a concern with the Public Staff's proposal for more granular filing requirements is that since much of the data in the filing requirements that the Public Staff recommends is already provided in the E.S.-1 reports, the requirements would be duplicative and inefficient. Duke opposes the Public Staff filing requirements; however, to the extent the Commission adopts these provisions, it should include a caveat that such information is required only to the extent not already provided in the E.S.-1 report.

Duke also notes in its reply comments that it has concerns about the Public Staff's proposed requirement to file much of the information – operating expenses and rate base items – at the rate class and rate schedule level. Duke states that it currently provides information by rate class annually in their cost of service (COS) studies and that those COS studies are extremely time consuming, taking four to five months to prepare. DEP files its annual COS study four months after the end of the calendar year, and DEC files its annual COS study five months after the end of the calendar year. Duke maintains that it would be infeasible to produce such a study within 45 days of the end of a quarter and extremely burdensome and unnecessary to produce it every quarter. Duke notes that even in a full rate case, the utility does not allocate individual capital projects to customer classes as the Public Staff is proposing in the construction status report. Duke further asserts that North Carolina's PBR Statute does not include fully forecasted test years, so there is no reason for the filing requirements for a PBR Application to include such information.

Duke notes that other potentially onerous filing requirements that CUCA recommends include, without limitation, providing a summary of alternative capital spending projects that are considered, presenting specific details on each large project, and providing specific details on deviations. Duke maintains that depending on what is meant by "specific details" and how "large" is defined, the information requested may exceed what a utility's engineers and project managers are able to provide considering the number of projects that are likely to be included in a MYRP. Duke notes that, depending on how a project is structured and the reasons for the project, there may not be many alternatives to present. Duke asserts that, for instance, if a utility is required by law or regulation to implement a capital project, it would be unnecessary to prepare a cost-benefit analysis or weigh alternatives.

Duke states that the filing requirements in its proposed rule would provide detailed and relevant information necessary for the Commission and parties to thoroughly evaluate a PBR Application, without requiring immaterial information that is unduly burdensome to prepare.

In reply comments Duke rejects NCJC et al.'s recommendation of additional burden of proof requirements for revenue decoupling adjustments included in PBR Applications. NCJC et al.'s proposed rule requires that utilities filing a PBR Application model and consider rate designs that reduce fixed charges or incorporate inclining block

rate adjustments. Duke asserts that the Commission should reject this because HB 951 requires PBR Applications to include decoupling adjustments and NCJC et al.'s proposed rule would burden utilities with justifying a statutorily-required adjustment. Duke believes that all stakeholders should advocate for whatever rate designs they deem appropriate. Duke rejects NCSEA's assertion that the filing requirements regarding decoupling include a demonstration of how decoupling has affected the residential class. Examining the benefits of increased energy efficiency may be helpful when evaluating the need for decoupling, but has little value when, as in North Carolina, a residential decoupling mechanism is already required by statute. Moreover, any evaluation of either low-income issues or rate shock must consider many other factors of equal or greater importance than revenue decoupling. Only analyses that incorporate all these factors can allow for a comprehensive assessment.

In reply comments the Public Staff emphasizes the need for a proposed decoupling mechanism in a PBR Application to benefit ratepayers and not merely protect the utility's earnings.

Duke notes in its supplemental reply comments that the Joint Intervenors add in their new proposed rule several PBR Application filing requirements that Duke opposes. For example, the Joint Intervenors add a requirement that a utility provide "granular forecasting data relating to T&D investments," including a requirement that projected investments be "identified by specific geographic locations." Duke states that it is not always able to project geographic locations up to four years in advance of when a project will go in service. Therefore, Duke asserts that this requirement is burdensome and unnecessary.

Duke also states in its supplemental reply comments that the Joint Intervenors include a requirement that the utility include a statement in its PBR Application that "inclusion of a project in a MYRP by the Commission does not constitute a prudence determination." Duke opposes this provision of the Joint Intervenors' proposed rule, stating that it is unnecessary and inappropriate to include a legal conclusion as a filing requirement. Further, Duke disagrees with this legal conclusion, arguing that the Commission's initial finding in authorizing the capital spending projects approved in the PBR Plan is that those projects are reasonable and prudent for the utility to pursue during the MYRP period – in other words, during the PBR rate case proceeding, the Commission gives the utility permission to go forward with specific capital spending projects that it has authorized for the MYRP and approves the associated revenue requirements for each rate year. Duke states that it recognizes and agrees with the need for a future prudence determination regarding the way Duke executes the authorized capital investments. However, Duke argues that it is unreasonable to suggest that the exhaustive review and approval process that the Commission will have undertaken in the PBR Application, and the Carbon Plan should be given no weight in the future.

The Public Staff states in its reply comments that it has revised its proposed rule to further clarify what information the utility should file. The Public Staff notes that it adds a new requirement that the utility must file a depreciation study completed within 180 days

of the filing of the PBR Application. The Public Staff believes that in most cases, the utility would file a new depreciation study, but thinks it is important to include this requirement as we are in a period where it is expected that utilities will make considerable capital investments and retire other assets early. Thus, the Public Staff argues that current depreciation studies are necessary to capture the changes in rate base.

The Joint Intervenors provide revisions to the Public Staff's proposed rule on filing requirements. They propose several new pieces of information including: the utility's goals for the decoupling mechanism; proposals to mitigate rate shock; an explanation of how the decoupling mechanism will work in concert with other financial incentives for energy efficiency activities; granular forecasts supporting transmission and distribution expenditures (i.e., at the substation or circuit level) to justify the electric public utility's proposed load-related investments at specific geographic locations; data provided to the parties in native format with formulae intact and working macros; detailed justification for each capital spending project, including the rationale for selecting the proposed project; prioritization of the capital spending projects; a side-by-side or similar comparison showing how projected operating benefits associated with the capital spending projects are factored into the electric public utility's proposed revenue requirement; specific details on PIMs including the consideration of PIMs proposed by intervenors; and a statement acknowledging that the Commission's authorization to include a set of projects and associated costs in a utility's MYRP does not constitute a prudence determination; and others.

NCJC et al. state in reply comments that the Commission's rules should clarify what information is required to evaluate a PBR Application. They also state that listing filing requirements is the most direct way for the Commission to ensure that certain issues are brought forward for consideration. NCJC et al. maintain that one way to achieve this goal (beyond provisions of the Joint Proposed Rule) would be to amend the information required on the Form E-1 that utilities must provide when filing a PBR Application.

DENC asserts in supplemental reply comments that the Commission should not require utilities to file updated depreciation studies with PBR Applications as proposed by the Public Staff in its reply comments. DENC argues that the new PBR rule should retain flexibility and not be overly prescriptive. DENC maintains that neither the traditional rate case statute, nor the new statute provisions enacted by HB 951, nor the Commission's existing rate case rules require that a depreciation study be included in a utility's filing. DENC argues that the utilities should retain flexibility to submit a depreciation study when appropriate to update depreciation rates but updating a depreciation study should not be a mandatory part of submitting a PBR Application, particularly given uncertain predictions about the level of utility capital investments and retirements that will occur in the future and the cost of such studies.

In addition, DENC states that the additional PBR filing requirements that the Joint Intervenors propose are overly prescriptive. DENC maintains that the proposals are too detailed for a new ratemaking construct and do not provide the flexibility that the Commission, the utilities, and other parties including the Public Staff will need to

determine the right level of information to be required for a PBR Application. DENC asserts that the requirements outlined in Duke's proposed rules provide an appropriate level of detail to be included in PBR Applications and should be adopted.

The Joint Intervenors, in supplemental reply comments, support the Public Staff's recommendation that the PBR rule should include a requirement that the utility file a depreciation study completed within 180 days of the filing of the PBR Application. They argue that this recommendation is important because current depreciation studies are necessary to capture the changes in rate base at a time when the utilities will make considerable capital investments and retire other assets early. The Joint Intervenors also argue that depreciation rates change over time for any number of reasons, including updated historical data, service life, net salvage estimates, or additions to generating facilities, among other reasons. They assert that because there are so many variables constantly in flux, which will only be exacerbated due to the pace at which generating plants will be retired and new assets will be placed into service over the coming decade, depreciation rates should be updated to reflect as close-to-current circumstances as possible.

In summary, the Public Staff recommends a detailed list of items to be included in a PBR Application. Duke asserts that much of the data in the filing requirements that the Public Staff recommends is already provided in the E.S.-1 reports, and therefore adopting the Public Staff's requirements would be duplicative and inefficient. Duke recommends a more limited list of items to be included in a PBR Application. The Joint Intervenors recommend several additions and edits to the Public Staff's proposed rule on filing requirements.

The Commission agrees with Duke that the Commission's rule should provide clear guidance regarding the filing requirements for a PBR Application. The Commission seeks to provide clear guidance, but also agrees that a filing electric public utility should provide more information in a PBR Application than proposed by Duke. The Commission concludes that much of the specific information proposed by the Public Staff for a PBR Application is appropriate and will provide all the parties and the Commission necessary information for evaluating a PBR Application.

The Commission also agrees with the recommendation of the Public Staff, as modified by Duke, that it is appropriate to include a requirement that a utility must file a depreciation study with its PBR Application that has been prepared no more than 180 days before the date the PBR Application is filed. The Commission agrees that current depreciation studies are necessary to capture the changes in rate base. However, the Commission also finds it appropriate to specify that an electric public utility serving less than 150,000 customers may file a new depreciation study that was prepared within two years of the PBR Application date.

The Commission declines to adopt the Public Staff proposal regarding the filing of specific testimony and exhibits; the requirement is duplicative of the language in the PBR

Statute itself and in some cases the information will be required by other provisions of the PBR Rule.

The Commission agrees with Duke that the Joint Intervenors' proposed requirement that an electric public utility include a statement in its PBR Application that "inclusion of a project in a MYRP by the Commission does not constitute a prudence determination" is unnecessary. Further discussion of a similar provision recommended by the Public Staff is included in the discussion of Issue 7 below.

The Commission is not persuaded that it is appropriate to modify the existing Form E-1 now as suggested by CIGFUR, but modifications to the Form E-1 can be made in a future proceeding of the Commission if deemed necessary.

The Commission is not persuaded to include the NCJC et al. recommendation for additional information regarding the decoupling adjustment in the PBR filing requirements. The Commission agrees with Duke's position that all stakeholders should advocate for rate designs they deem appropriate in the rate case, and inclusion of alternative rate designs in the filing requirements is unnecessary.

The Commission finds good cause to adopt Duke's proposal that to the extent that net lost revenues are collected through the utility's DSM/EE rider, the utility must include a plan in its decoupling filing to ensure that there is no double collection of net lost revenues through the DSM/EE rider and the decoupling mechanism.

The Commission adopts the Public Staff recommendation that the proposed Decoupling Ratemaking Mechanism in the PBR Application include 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. While the AGO believes that eliminating EV sales from the mechanism directly conflicts with the purpose of decoupling and provides financial benefit to the utility, the PBR Statute clearly states that an electric public utility may exclude rate schedules or riders for electric vehicle charging.

Based on the recommendations filed with the Commission on this issue and on a thorough review of the items proposed by the parties for inclusion in the Commission's rule outlining filing requirements for a PBR Application, the Commission finds that it is appropriate to adopt the Public Staff's proposal with specific revisions attached hereto in Rule R1-17B.

Issue 6: Deferrals

In its initial comments, Duke recommends the inclusion of language in the rule stating that the Commission may still grant deferral accounting for any extraordinary costs identified between rate cases that are not otherwise recognized in rates. Further, Duke recommends a rule that provides that if the Commission fails to issue an order on a utility's PBR Application during the statutory period of 300 days, and the utility elects not to implement temporary rates, the Commission shall authorize deferred accounting or

another mechanism for the utility to recover any “revenue shortfalls” resulting from the delay. Duke argues that this added provision provides electric public utilities an alternative to implementing temporary rates.

In reply comments Duke reiterates that the approval of a PBR Application does not limit the Commission’s authority to grant additional deferrals between rate cases for extraordinary costs not otherwise recognized in rates. In addition, it maintains that if the utility forecasts that any single new generation plant with a total plant in service balance more than \$500 million will be placed into service during the term of the MYRP, such plant shall not be included in a MYRP, but instead the utility may, either as part of the PBR Application or separately, request a deferral accounting order for such a plant. Duke again argues that if the Commission fails to approve, modify, or reject the electric public utility’s PBR Application prior to the end of the 300-day suspension period allowed under the PBR Statute, and the utility elects not to implement the requested rates prior to the Commission issuing an order, the Commission should authorize deferred accounting or such other mechanism that will allow the utility to recover revenue shortfalls resulting from such delay, including carrying costs at the utility’s last authorized weighted average cost of capital. Duke did not recommend any change in its proposed rule for deferrals in its reply comments.

In reply comments, the AGO opposes Duke’s proposed rule to require deferral of requested rates plus carrying costs if it takes longer than 300 days for the Commission to decide the PBR Application should be rejected, stating that there is no statutory provision authorizing such a deferral. The AGO argues that Duke may request temporary rates and place those rates into effect after the deadline for a decision passes. The AGO further argues that Duke has not shown the need to address this concern in a rule rather than by motion should extenuating circumstances arise. The AGO notes that Duke is protected by the provision that allows rates to take effect after 300 days, and once the Commission establishes rates, customers may petition for refund of the excess charged in the interim pursuant to N.C.G.S. § 62-132.

In their reply comments, NCJC et al. note that a utility’s ability to request expense deferrals during the MYRP creates a very large loophole that could enable a utility to exceed the 4% statutory cap on year-to-year rate changes. NCJC et al. argue that while Duke’s proposed rule allowing Commission authorization for “additional deferrals between rate cases for extraordinary costs not otherwise recognized in rates” is permissible under the statute, such a provision creates a large loophole and defeats one of the main purposes of PBR, which is to incentivize the utility to become more efficient. They argue that if the Commission adopts this provision, the Commission should state its unambiguous intention to limit such interventions to truly rare and extraordinary situations.

In reply comments Tech Customers argue that the Commission should reject Duke’s proposal to automatically approve deferred accounting in the absence of a ruling by the Commission within 300 days. Tech Customers note that Duke asks the Commission to make it an unyielding rule that, if the Commission fails to rule on a PBR Application within 300 days, the Commission will authorize “deferred accounting or such

other mechanisms” that would allow the utility to recover revenue shortfalls from the delay. Tech Customers argue that the Commission should not adopt such a rule and that there is no basis for this request in the statute. Tech Customers note that the PBR Statute only provides that the Commission cannot suspend the implementation of proposed rates for longer than 300 days. Further, Tech Customers assert that as the utility may implement temporary rates under bond, deferred accounting is not necessary. They also argue that granting deferred accounting does more than merely compensate the utility for a delay in collecting revenues, it rewards the utility by providing an additional return on top of the delayed revenues. Tech Customers assert that there is no statutory basis or practical need to automatically grant Duke deferred accounting if a PBR process runs long.

In supplemental reply comments, the Joint Intervenors assert that Duke’s contention that deferred accounting should be granted if a MYRP is not approved in 300 days, despite there being no legislative language requiring such treatment, is inconsistent with Duke’s argument that the Commission must reject all the intervenors’ proposals because the Commission is powerless to determine how best to “fill in the gaps” of the legislation.

The Commission notes that subsection (e) of the PBR Statute includes the following language on deferral accounting: “the approval of a PBR shall not be construed to limit the Commission’s authority to grant additional deferrals between rate cases for extraordinary costs not otherwise recognized in rates.”

North Carolina law authorizes the Commission to consider and grant or deny requests for deferrals for extraordinary costs between rate cases, as it has done historically. The Commission finds that it is unnecessary for the PBR Rule to reiterate this authority. Any request for a special accounting order allowing deferral during a PBR Plan Period will proceed in accordance with the Commission’s established practices related to special accounting orders. Further, the Commission is not persuaded by the comments of NCJC, et al. that the Commission needs to limit its consideration of these requests and finds that scrutiny of a utility’s deferral request will be addressed by the Commission during its consideration of an actual request.

In addition, the Commission agrees with Tech Customers and Joint Intervenors that there is no statutory basis to adopt Duke’s proposal for an automatic deferral for a “revenue shortfall” due to a delay in a final order on a PBR Application. The Commission declines to adopt Duke’s proposed rule providing for such an automatic deferral. The Commission notes that as outlined above, a utility may file a deferral request for a revenue shortfall with the Commission, and the Commission will consider such requests consistent with its historical practices and standards. Additionally, there may be less draconian solutions if in fact there is a revenue shortfall resulting from the timing of a final order on a PBR Application and the effective dates of rates under an approved PBR. For example,

any revenue shortfall may be recovered in future experience modification factors, as may be established, associated with the adjustments in the Annual Review.

Issue 7: Review of Capital Projects

In its proposed rule filed with initial comments, Duke proposes that utilities include information on forecasted capital spending projects in a MYRP filed with a PBR Application including the projected plant in service amounts, projected in-service month, and calculations for revenue requirements associated with capital projects for each year of a MYRP.

The Public Staff's proposed rule in its initial comments requires more extensive information related to projected capital spending projects in the PBR Application and the annual review process. The Public Staff proposed rule also includes quarterly filing requirements for the electric public utility that include information on capital spending projects.

In addition, the Public Staff includes in its proposed rule guidelines concerning the cancelation or postponement of capital spending projects included in the approved PBR Plan Period. The Public Staff proposes that if a capital spending project included in a MYRP is canceled or postponed, within 30 days of its cancelation or postponement, the 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.

In its initial comments CIGFUR recommends that the Commission require the applicable electric public utility to provide detailed information with respect to capital investments, in addition to the information suggested by the utilities and the Public Staff, and also include an explanation as to how the planned expenditure complies with the "least cost" requirements set forth in N.C.G.S. § 62-2(3a).

CIGFUR also argues that the PBR Statute requires Commission pre-approval of capital investments before the utility may recover same through a MYRP. CIGFUR believes the nature of these decisions warrants the kind of scrutiny afforded by contested proceedings and evidentiary hearings, specifically discovery and cross-examination. Moreover, CIGFUR believes that because it is highly likely that several issues of fact and law related to the pre-approved capital expenditure list will overlap with, and otherwise be inextricably linked to, the MYRP for which the utility will seek approval as part of a general rate case filed with a PBR Application, CIGFUR recommends that such list of pre-approved capital expenditures be added to the list of contested issues that the Commission will decide in its order deciding a general rate case filed with a PBR Application. If, however, the Commission envisions a capital expenditure pre-approval process that will occur separate and apart from, or before, a proceeding on the applicable electric public utility's application for general rate case that includes a PBR Application, CIGFUR recommends that the Commission adopt a rule governing the process by which such pre-approval will be obtained.

CUCA recommends that the utility include as part of an acceptable PBR Application, among other things, documentation of the need for all capital projects and, where appropriate, reference to the utility's IRP or internal capital investment plan; a prioritization of projects that accounts for a project's risk reduction; evaluation and documentation of alternatives to the utility's proposed investments; evaluation of how the plan conforms to the utility's Carbon Reduction Plan; and annual reports that explain differences between projected investments and actual spending.

CUCA notes that Synapse (its consulting firm) recommends that a proposal for returning any under-spend related to capital spending projects to customers through a rider or other mechanism be included as part of an acceptable PBR Application. Synapse also recommends against seeking recovery of any utility over-spend through the MYRP. Synapse believes that proposal would provide greater protection for ratepayers than the PBR Statute's prescribed 50 basis point cap on overearnings.

Tech Customers state that basing rate adjustments on forecasted costs will require a high level of specificity about proposed spending and projected operating benefits to satisfy the statutory standard and allow for meaningful review by the Commission. Tech Customers contend that such specificity will also afford stakeholders an opportunity to participate fully and effectively in the hearing process.

NCSEA states that the General Assembly's use of the past tense word "authorized" in N.C.G.S. § 62-133.16(c)(1)(a) indicates that the legislature intended for the Commission to authorize capital investments prior to a utility filing a PBR Application. NCSEA suggests that the Commission's rules implementing the PBR Statute should include a docketed proceeding that must be initiated at least six months prior to the filing of a PBR Application. NCSEA contends that the criteria for the Commission's authorization of capital investments should be set forth in the Commission's rules implementing N.C.G.S. § 62-133.16. Traditionally, the Commission has allowed cost recovery of capital investments that led to a reliable, affordable, and safe electric grid; HB 951 added carbon reductions to this list of requirements for capital investments.

In reply comments Duke states that one area of disagreement with the Public Staff relates to the treatment of canceled or postponed capital spending projects that had been authorized by the Commission as part of a PBR Plan. Duke asserts that the Public Staff's proposed rule proposes changes in rates for canceled or delayed projects, and that that proposal is far beyond the scope of the PBR Statute. Duke further asserts that the intervenors' concerns regarding the substitution of projects is addressed by the prudence review of substituted projects that would occur in the next general rate case proceeding.

Duke maintains that the Public Staff's proposal to reduce rates for canceled or postponed capital projects would encroach on utility operations and project management decisions. They state that as has been well-established under North Carolina law, the utility bears the obligation to provide reliability and, as a result, it is necessary that the utility maintain discretion regarding the investment decisions required to ensure continued

reliability in the most prudent and reasonable manner, in all cases subject to future prudence review by the Commission.

Duke does not agree that it is necessary for the Commission to establish special rules regarding the burden of proof for PBR rate cases as recommended in the Public Staff's proposed rule. They state that N.C.G.S. § 62-134(c) provides that "[a]t any hearing involving a rate changed or sought to be changed by the public utility, the burden of proof shall be upon the public utility to show that the changed rate is just and reasonable." Thus, the burden of proof to show that rates are just and reasonable is always on the utility. For a utility's prima facie case, all costs are presumed reasonable unless challenged; thus, intervenors have a burden of production if they dispute an aspect of the utility's prima facie case. If the intervenor meets its burden of production, of course, the ultimate burden of persuasion reverts or shifts to the utility, in accordance with N.C.G.S. § 62-134(c). Therefore, intervenors may not rest merely on arguments and theories, they must adduce actual evidence challenging some aspect of the Company's cost recovery case. Duke asserts that a PBR rate case is clearly a "hearing involving a rate changed or sought to be changed by the public utility," N.C.G.S. § 62-134(c) and the case law interpreting N.C.G.S. § 62-134(c) applies.

Duke argues that if a utility cancels a project, and therefore spends less on capital projects than it is collecting through the approved revenue requirements relating to that project, customers would be reimbursed to the extent that the underspending leads to overearning in excess of 50 basis points.

Duke also opposes the Public Staff's proposed rule requiring that a utility notify the Commission within 30 days of cancelation or postponement of capital projects and prohibiting a utility from substituting one or more capital spending projects for an already Commission-approved capital spending project without Commission approval. Duke maintains that such a rule would limit the utility's operational and managerial flexibility and discretion, prevent real-time, on-the-ground prudent and reasonable utility decision-making regarding project postponement or cancelation, create unintended consequences that would weaken utility incentives to improve performance and take initiatives that yield results, create more administrative burden and lessen regulatory efficiency. Duke asserts that, perhaps most importantly, the Public Staff's proposed process contradicts the plain language of the PBR Statute by adding a rate adjustment – in effect, an asymmetrical true-up for cancelation costs – that is not permitted by the PBR Statute.

Duke further asserts that the Public Staff's proposal is one-sided and would unfairly penalize a utility for short delays while providing no offset for projects that are placed in-service earlier than anticipated. Duke states that a similar concern arises if a utility must credit customers for any incremental project costs that are lower than forecasted, while absorbing any project costs that are greater than forecasted. Duke maintains that the integrity of a capital budgeting process should be assessed based on its overall reasonableness, not the utility's ability to project each in-service date and investment cost for particular investments with 100% accuracy.

Duke suggests that a more reasonable approach to addressing canceled or postponed projects would be to require the utility to file an annual reconciliation report of actual projects placed in service during a Rate Year compared to the projected amounts approved in the rate case. The utility could explain any variances and canceled or postponed projects. Duke notes that if the Commission or the Public Staff, after reviewing the reconciliation report, believes that the current rates should be adjusted, either could initiate a proceeding to adjust rates pursuant to N.C.G.S. § 62-133.16(e). Duke maintains that this approach would allow the utility to manage its operations efficiently and prudently while preserving the Commission and Public Staff's ability to ensure that rates are just and reasonable.

Duke also opposes CIGFUR's proposal that utilities be required to show that all capital projects meet the "least cost" standard, arguing that it is not appropriate or necessary given that there are a variety of types of investments that will be made under a MYRP, some of which will be required for general reliability and compliance purposes, and others of which will be specifically part of the "least cost" path to achieve carbon reduction targets. The justification for each investment will vary based on the nature of the investment and it is not appropriate to impose a blanket requirement.

In reply comments Duke also counters CUCA's proposal for returning underspend related to capital spending projects to customers by stating that "one way cost reconciliation" as suggested by Synapse is not permitted by the PBR Statute since there is no provision in the statute for returning underspend to customers. Duke adds that there may be good reasons for capital costs to be lower than forecasted, including normal market fluctuations and efficient management. Duke believes that a true-up would constitute retroactive ratemaking if it is a "clawback" of savings that result from the capital costs of approved projects being less than projected levels, refunds for canceled or delayed projects, or anything else. Duke claims that these clawbacks are not provided for in the PBR Statute, would weaken performance incentives, would require significant resources to administer, and tend to be one-sided, i.e., requiring the utility to compensate customers for any underspending while offering less protection to the utility against overspending.

In its reply comments, DENC also opposes all three of the Public Staff's proposals on the grounds that they would inequitably penalize a utility for making a prudent decision to cancel or postpone a capital project. In addition, DENC states that the process would not allow the utility to seek to recover prudently incurred increased costs for capital projects without filing a new rate case. DENC believes that this proposed process would effectively create an additional rate adjustment not contemplated by HB 951 and that the PBR Statute did not address an additional rate adjustment for canceled or postponed projects like that proposed by the Public Staff.

In its reply comments the Public Staff does not materially modify its proposed rule regarding the filing requirements related to capital spending projects, but the Public Staff proposes additional quarterly reporting requirements with respect to capital spending projects.

The Public Staff states that some parties would require the Commission to authorize capital projects prior to the filing of a PBR Application, possibly combined with the Technical Conference. The Public Staff does not read the PBR Statute to require the approval of capital projects prior to consideration of the MYRP, as the PBR Statute contemplates that these projects would be approved during the MYRP application review.

In reply comments the Public Staff states that because approved capital spending projects are based on estimates of costs and timing, it is unlikely that the estimates will be exactly on target. Since the rates charged to customers will be based on these estimates, the Public Staff believes that it is unfair for customers to pay for capital spending projects when the costs of projects have declined, either through actual costs being lower than budgeted, cancelation, postponement of the in-service date from one year to another, or substitution of one project for another. The Public Staff proposes that if projects are canceled or substituted, then the utility should seek approval of its revised plan. Overall, to the extent that the newly calculated total annual revenue requirement for a capital spending project for any of the three MYRP years, as approved by the Commission, is less than the annual revenue requirement previously approved for that project and that year, the Public Staff proposes that the Commission would reduce the MYRP portion of base rates effective for any MYRP years affected, and make appropriate provisions to refund the difference, with interest, to the affected customers. If a capital spending project is approved for substitution for another, the comparison of revenue requirements for each year would be between those two projects.

The Public Staff states that it is vital that utilities be accountable for material changes to the costs, so customers only pay for what they are receiving. The Public Staff points out that the PBR Statute differs from most other PBR regimes by primarily basing incremental PBR rates on eligible capital project cost estimates that are derived using traditional cost of service principles. The Public Staff notes that while the PBR Statute limits rate increases in the second and third MYRP rate years, and while the ESM may capture some of the impact of changes to capital spending projects, the reasonableness of those rates for customers ultimately depends on the reasonableness and accuracy of the utility's capital project planning and cost estimates in its PBR Application. In addition, it is unlikely that the ESM will capture all capital spending project changes. The Public Staff contends that the utility should not profit from changes to its capital spending projects. The Public Staff maintains that without requiring refunds to customers for material changes, there is an incentive for the utility to inflate estimates or slow down or cancel projects and reap the benefits. Thus, the Public Staff recommends that the Commission include a true up of the estimated and actual costs and return the difference to customers.

The AGO contends that there is a strong need for the Commission and parties to review proposed capital investments before a utility files its PBR Application and proposed MYRP. A review of proposed capital investment projects, across generation, transmission, and distribution, that are expected to be included in a subsequent MYRP, will allow parties and the Commission to understand the broader strategic context in which these investments are placed and allow for evaluation and vetting of these investments

prior to the 300-day clock beginning to run in a formal PBR Application filing. Stated simply, the 300-day timeline governing the PBR Application review and approval process will be too brief to unpack all elements of a utility's PBR Application – it is invariably too complex. Parties and the Commission need time to review and consider an investment plan to fully understand its implications for customers and the broader environment. Accordingly, the AGO recommends the Commission direct utilities to submit, in conjunction with their requisite IRP and Carbon Plan filings, a detailed capital investment plan for those projects that would be eligible and authorized for inclusion in a subsequent PBR Application and proposed MYRP.

The Joint Intervenors disagree with Duke's position set forth in its initial comments that the PBR rule adopted 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.'" The Joint Intervenors express concern that Duke's preferred 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 Joint Intervenors contend that the only other opportunity to do so would not occur until the applicable electric public utility files its next general rate case, which could be a lengthy period of time if the Commission allows Duke's proposal to allow third-year MYRP rates to continue in perpetuity beyond the 36-month MYRP expiration date.

The Joint Intervenors also recommend in their proposed rule that "Capital Spending Projects shall be reviewed during the Annual Review and Reconciliation proceeding, including any project substitutions or other material changes made." The Joint Intervenors suggest changes to the Public Staff's proposed annual review of PBR Results to include the filing of testimony, exhibits, and workpapers following the conclusion of the Rate Year. The Joint Intervenors also propose that the Public Staff rule require additional information regarding changes in capital projects, including change orders and business cases for those changes.

NCJC et al. recommend that the Commission adopt CUCA's recommendation for a return of any underspend to customers.

In supplemental reply comments, Duke states that the Public Staff's revised rule addresses prudence review in new ways. Duke comments that although it is not entirely clear what the Public Staff is proposing, it appears that the Public Staff envisions some amount of prudence review within the annual review process. Duke notes that similar provisions were included in the Joint Intervenors proposed rules. Duke maintains that the intent of the MYRP is to allow for rate recognition of Commission-authorized capital investments without the need for the filing of new base rate cases, and the scope of the annual PBR review process is narrowly and clearly defined by N.C.G.S. § 62-133.16(c)(1)(c). Duke contends that turning the annual review process into a full prudence review is contrary to this intent of the MYRP construct and not supported by the PBR Statute. Duke notes that the Commission retains the option to initiate a proceeding for a more comprehensive review under subsection (e) of the PBR Statute.

Duke states that if the Commission were to authorize prudence review during the annual review process, the Public Staff's revised rule also adds an entirely new provision which appears to allow reasonableness and prudence of capital expenditures to be reviewed and ruled upon twice – once during the annual review process under the MYRP and then again in the utility's next rate case.

Duke states in its reply comments that the Joint Intervenors add similar provisions. However, contrary to the Public Staff's new proposed rule, Duke argues, if the Commission approves the reasonableness or prudence of revenues, expenses, or items of rate base during the MYRP through the annual review process, absent a showing of changed circumstances, the Public Staff, intervenors, and the Commission are precluded from revisiting the reasonableness and prudence of the same items in the utility's next rate case.

Duke asserts that the Parties should not be able to have it both ways – turning the annual review process into a mini-rate case assessing the prudence of each capital investment while simultaneously asserting that such review is meaningless and can be completely revisited later. Duke supports the right of the Commission and all parties to assess the reasonableness and prudence of its investments but maintains that the PBR Statute does not support them having multiple opportunities to do, nor does Commission' precedent, regulatory efficiency, or common sense.

Duke notes that the Joint Intervenors include a requirement that the utility include a statement in its PBR Application that "inclusion of a project in a MYRP by the Commission does not constitute a prudence determination." Duke opposes this provision of the Joint Intervenors' proposed rule and asserts that it is unnecessary and inappropriate to include a legal conclusion as a filing requirement. Further, Duke disagrees with this legal conclusion. Duke asserts that the Commission's initial finding in authorizing the capital spending projects approved in the PBR Plan is that those projects are reasonable and prudent for the utility to pursue during the MYRP period. In other words, during the PBR rate case proceeding the Commission gives the utility approval to initiate specific capital spending projects that it has authorized for the MYRP and approves the associated revenue requirements for each rate year. However, the Duke recognizes and agrees with the need for a future prudence determination regarding the execution of the authorized capital investments. However, Duke maintains that it is unreasonable to suggest that the exhaustive review and approval process that will have been undertaken by the Commission in the PBR Application should be given no weight whatsoever in the future.

Duke states in its reply comments that the Joint Intervenors have completely revamped the annual review process to include the filing of testimony and exhibits by the utility and intervenors. Duke asserts that the proposals of the Public Staff and the Joint Intervenors regarding the annual review process go far beyond the PBR Statute and result in a series of rate case-like proceedings. Duke contends that the annual review is intended to be a verification of the calculations for the decoupling, ESM, and PIMs mechanisms. With respect to capital projects previously authorized by the Commission,

Duke maintains that an annual review filing with schedules that provide the results and explanations for any major variances is appropriate for this stage of the PBR Plan process. Duke contends that a requirement in the Joint Intervenors' proposed rule that the utility file testimony annually as part of the Annual Review process is unnecessary as the Public Staff may interface with the utility during its audit to discuss any concerns or obtain more information concerning data included in the utility's annual review filing.

The Commission agrees with Duke that the Commission's initial finding in authorizing the capital spending projects approved in a PBR Application is that those projects are reasonable and prudent for the utility to pursue during the MYRP period. That is, during the PBR rate case proceeding, the Commission gives the utility approval to commence specific capital spending projects that it has authorized for the MYRP and approval of the associated revenue requirements for each rate year. The Commission further agrees with Duke regarding the need for a future prudence determination regarding the manner in which the utility executes the authorized capital investments, including the prudence determination for substituted capital projects not included in the approved PBR.

The Commission notes that the PBR Statute provides that an application for a PBR must be included in a general rate case proceeding. The PBR Statute also provides that in the event the Commission rejects a PBR Application, the underlying rate case proceeding would proceed with the rates for the utility being established using the Commission's traditional ratemaking authority under N.C.G.S. § 62-133. The Commission acknowledges that when the utility proposes the PBR Application in its general rate case proceeding there will not be actual cost data available pertaining to the projected capital spending projects for the Public Staff to review and analyze. However, the Rule approved herein requires that the utility provide as part of the filing requirements of the PBR Application information concerning each capital spending project, including "a detailed description, including the reason for and scope of each proposed capital investment project."

The Commission recognizes a PBR Application, by definition, involves a forward-looking 36-month rate plan that may include future investment in infrastructure projected to be placed in service during the entire PBR Plan Period. An 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, and any approved PBR Application should therefore only include projected prudent capital investments. The Public Staff and the Commission will review the actual capital investments made pursuant to the approved PBR Application through the quarterly reporting process established in the Rule adopted herein and they will be subject to a certain level of review again for prudence and reasonableness in the utility's next general rate case proceeding. The Commission finds that while an approved MYRP will allow cost recovery resulting in limited or capped rate increases for years two and three of the PBR

Plan Period, the utility's investment decisions remain subject to the reasonable and prudent standard set forth in N.C.G.S. § 62-133.

Further, the customer protections established in the PBR Rule approved herein, in particular the reporting requirements in subsection (h) of the PBR Rule, require the utility to provide a quarterly construction status report for each capital spending project and a tracking report that identifies the changes to any capital spending project approved by the Commission and included in the MYRP. The Public Staff and the Commission will use these reports to, among other things, review actual capital investments compared to the approved PBR Application. The Public Staff's scrutiny and review of these quarterly reports will enable it to identify any prudence concerns regarding actual capital investments that it should investigate and bring to the Commission's attention in the next general rate case. Also, the customer protection set forth in the PBR Statute through the ESM should prevent excessive earnings by the utility that could result if a utility consistently over-projected capital costs of approved projects in its MYRP. Finally, subsection (e) of the PBR Statute provides that upon the Commission's own motion, or motion of the Public Staff, a proceeding can be initiated during a PBR Plan Period to adjust rates as necessary.

The Commission agrees with Duke that the PBR process is not designed or intended to replace the existing base rate case process with a continuous annual audit of activity across the PBR Plan Period.

The Commission also agrees with Duke that the burden of proof clause included in the Public Staff's proposed rule is unnecessary. The Commission notes that existing statutes place the burden of proof on the public utility, including N.C.G.S. § 62-75, which provides that the burden of proof shall be on the utility for the purpose of investigating any rate, service, classification, rule, regulation, or practice to show that the same is just and reasonable, and N.C.G.S. § 62-134(c) which provides that the burden of proof shall be on the public utility to show that a changed rate is just and reasonable. Therefore, the Commission finds that the Public Staff's inclusion of a clause in its proposed rule stating that the burden of proof is on the public utility as to whether a MYRP mechanism is in the public interest, the correctness and reasonableness of any MYRP, and whether the capital investment and expenses were reasonable and prudently incurred is unnecessary and therefore excludes it from the PBR Rule adopted herein.

The Commission notes that the PBR Statute provides that the Commission may only approve a PBR Application "upon a finding that proposed PBR would result in just and reasonable rates, is in the public interest, and is consistent with the criteria established in this section and rules adopted thereunder." The PBR Statute further provides that in reviewing a PBR Application, the Commission shall consider whether the PBR Application: (a) assures that no customer or class of customers is unreasonably harmed and that the rates are fair both to the electric public utility and to the customer; (b) reasonably assures the continuation of safe and reliable electric service; and (c) will not unreasonably prejudice any class of electric customers and result in sudden substantial rate increases or "rate shock" to customers. The Commission acknowledges

that it is imperative that any electric public utility filing a PBR Application provide sufficient information in its application for the Commission to determine whether that application meets the standards set forth in the PBR Statute.

The projected capital investments for the PBR Plan Period will be reviewed in the PBR Application process, and only those capital investments found to be reasonable and prudent and in the public interest will be approved in the MYRP. The Commission acknowledges that Duke expects that in most circumstances, the actual investments will largely track the projected investments. The Commission further acknowledges that Duke expects that changes from the approved projected capital investments will be narrow, targeted, and in the best interests of customers. However, the Commission finds that it is unreasonable to assume that across a three-year period, there will not be circumstances in which it would be prudent and reasonable for the utility to modify or delay certain investment decisions, nor would it be in the public interest for the Commission to approve a PBR Rule structure that limits the ability of or disincentivizes the utility to bring its technical expertise to bear in real time on its system. The Commission agrees with Duke that it should have the discretion to modify or cancel projects when doing so is in the public interest. Decisions to delay, modify, cancel, or substitute projects included in the MYRP capital investment plan will be subject to review for reasonableness and prudence in the utility's next succeeding general rate case.

Therefore, the Commission declines to include the Public Staff's and intervenors' proposed rules related to canceled, postponed, and substituted projects, including the review of capital spending projects in each annual review, and the reduction of rates due to any canceled or postponed projects. The Commission finds that the annual review of rates is not permitted by the PBR Statute and agrees such a process could limit the utility's operational and managerial flexibility and discretion. The Commission also finds that the proposed procedures encroach on utility operations and project management decisions. The Commission rejects the Public Staff's proposed rule requiring Commission approval and utility refunds for cancelations, as the PBR Statute does not authorize such a mechanism. The PBR Statute establishes three statutorily permitted annual rate adjustments related to an ESM, decoupling, and PIMs. The Commission determines that the true-up proposed by the Public Staff and the intervenors to flow back refunds to customers for canceled or postponed projects is not one of the statutorily permitted annual rate adjustments.

The Commission finds that changes to the capital projects included in the approved PBR Application should be provided in the quarterly reporting process as set forth in the PBR Rule approved herein. The Public Staff will carefully review and analyze the proposed changes to the capital projects submitted by the electric public utility in its quarterly reports. Rates will not be changed to reflect changes in actual capital spending compared to the approved PBR Application unless the Commission determines that such modification is necessary pursuant to N.C.G.S. § 62-133.16(e). In general, if the revised capital investments exceed the amount approved in the PBR Application, rates will not be increased beyond the rates approved for the PBR Application. The Commission does not intend for the PBR Rule to result in a "mini rate case" review for each year of the PBR

Plan Period. Rather, the following reasonable safeguards will be in place to allow for the review of and any action on changes in planned capital investment (1) the review by the Public Staff of actual capital investment spending compared to the approved PBR Application enabled through the quarterly reporting process; (2) the Commission's Annual Review of a utility's earnings to ensure the utility is not earning in excess of its allowable rate of return on equity; and (3) and the Commission's option to initiate a more comprehensive review under subsection (e) of the PBR Statute.

Issue 8: Annual Review

In its initial comments Duke states that one of the purposes of PBR is to incentivize utilities to encourage efficient investment consistent with the PBR Statute through MYRPs that reduce the need for more frequent traditional base rate cases that require substantial time and resources from regulators, utilities and intervenors. Accordingly, the rules adopted by the Commission to implement PBR and MYRP should allow for an efficient and effective process for the annual PBR review that is limited in scope and duration to avoid turning the annual review process into a "mini rate case." Duke notes that the more the annual review and adjustment process looks like a rate case and requires time and resources like a rate case, the more the purpose of PBR and MYRP is undermined.

Further, Duke opines while it is important for the Commission to have the opportunity to conduct a yearly review during a MYRP, the PBR process is not intended to layer on top of the existing base rate case process an ongoing rate-case-like audit of a utility's activity throughout the three-year period. Thus, Duke's proposed rule is designed to ensure that the PBR process fairly balances the need for adequate oversight with the benefits of a streamlined annual review process. Duke also states that an annual review process that is unnecessarily complicated, drawn out, or allows parties to relitigate issues that they previously raised during the base rate case, undermines this predictability and stability.

Duke's proposed PBR rule requires the Commission, in its order approving or modifying a PBR Application, to approve templates for the calculations to adjust the Annual ESM Rider, the Annual PIMs Rider, and the Annual Decoupling Rider. Duke asserts that having the Commission approve these templates in the PBR Application proceeding will provide the clarity necessary for an efficient annual review process.

Duke's proposed rule provides that the Commission would initiate a review process for the Annual ESM Rider and Annual PIMs Rider within 60 days of the end of the prior Rate Year, and that the electric public utility would provide an Annual ESM and PIMs Review Report within 90 days of the conclusion of the Rate Year. Duke's proposed rule also provides for the Public Staff to review the Annual ESM and PIMs Review Report within 60 days and provide its comments and verifications of the calculations for the Annual ESM and Annual PIM(s) rider adjustments. The utility would have 30 days to file a reply to the Public Staff's report. The Commission would issue an order establishing the adjustments to the Annual ESM and PIMs Riders within 270 days of the conclusion of each Rate Year, and the adjustments shall be effective no more than one year after the

conclusion of the Rate Year being reviewed with rates set to recover or distribute approved rider amounts over a 12-month period.

Under Duke's proposed rule, there is no comprehensive true-up to reflect changes in costs relating to capital spending projects, O&M not related to MYRP projects, inflation, adjustments for underearning, or any other variations occurring during the PBR Plan.

Duke notes that should the Commission feel it warranted, under Duke's proposed rule the Commission retains the ability to initiate a proceeding for a more comprehensive review. Duke includes a provision restating the provision in subsection (e) of the PBR Statute that 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 an electric public utility's rates under a plan, conduct periodic reviews with opportunities for public hearings and comments from interested parties, and initiate a proceeding to adjust base rates or PIM(s) as necessary. Duke includes in its proposed rule a requirement that should the Commission initiate such a proceeding, the electric public utility shall have the right to respond and file testimony and exhibits to address the reasonableness of its rates under an approved plan and that no adjustments to the base rates or PIM(s) shall be made unless the Commission finds after notice and hearing that the current rates or PIM(s) under a plan are not just and reasonable and not in the public interest.

The Public Staff provides in its rule that the Commission should 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.

Regarding the MYRP ESM, the Public Staff's proposed rule provides that the Commission shall annually review an electric public utility's earnings, as adjusted to consider the criteria imposed on the MYRP for that year, to ensure the utility is not earning in excess of its allowable return on equity for reasonable and prudent costs, as adjusted, to provide service. For purposes of measuring an electric public utility's earnings under any mechanisms, plans, or settlements approved under this section, the utility shall make an annual filing that sets forth the utility's earned return on equity for the prior MYRP Rate Year, with appropriate adjustments.

Regarding the PIMs, the Public Staff's proposed rule provides the utility shall file the calculations of all increment and decrement billing factors associated with the PIMs approved by the Commission for the MYRP rate period and provide all workpapers and supporting documentation verifying and supporting the results of the metrics used to quantify the PIMs' results.

The Public Staff also includes a provision related to subsection (e) of the PBR Statute that would allow for Commission review at any time prior to expiration of a PBR Plan Period. Under the Public Staff's proposal, the Commission, with good cause and upon its own motion or petition by the Public Staff, may examine the reasonableness of

the electric public utility's rates under the plan, conduct reviews of and hearings on the plan, or adjust base rates or PIMs.

NCSEA states that the PBR Statute gives the Commission discretionary authority to conduct periodic review of a PBR rate plan and requires annual reporting on earnings by the utility and annual evaluation of such earnings by the Commission. NCSEA states that the Commission should issue rules that require sufficient reporting to enable informed periodic review and clarity and certainty regarding annual evaluation proceedings. NCSEA further explains that subsection (h) of the PBR Statute requires a utility to report on an annual basis, its earned return on equity and actual revenue, as well as adjustments for customer refunds and surcharges pursuant to the PBR rate plan. NCSEA suggests that the Commission adopt rules that require ongoing reporting by the utility that will allow the Commission and other stakeholders to evaluate performance upon the established criteria prior to the end of the applicable Rate Year in order to examine the reasonableness of a utility's PBR Plan.

NCJC et al. comment that the Commission should annually review the results of the utility's operations during the prior year, including: (1) actual capital projects placed in service; (2) utility earnings levels; (3) utility sales and any adjustments needed due to a decoupling mechanism, including amounts to be refunded to or collected from customers based on the decoupling true-up mechanism and adjustments to rates going forward as a result of the mechanism; (4) other utility revenue adjustments required by the adopted MYRP and ESM; and (5) utility performance against any adopted PIMs or tracked metrics to calculate penalties and incentives. After this review, NCJC et al. propose, the Commission would approve the actual rates to be used in the subsequent year of the PBR Plan.

In its list of partial proposed rules, NCJC et al. propose that a review by the Commission be allowed at any time prior to conclusion of a PBR Plan Period. NCJC et al. note that the Commission has the discretion to examine the reasonableness of an electric utility's rates under the plan, conduct periodic reviews with opportunities for public hearings and comments from interested parties, and initiate a proceeding to adjust rates or PIMs as necessary.

In reply comments, Duke states that rates are to be adjusted during the MYRP pursuant to three riders: the Annual Decoupling Rider, the Annual PIM Rider, and the Annual ESM Rider. Duke further describes the purpose of the annual review for the three riders but does not propose any changes to its proposed rule in reply comments.

Duke characterizes the Annual Decoupling Rider Review as verifying and determining the amount of distributions or collections necessary under the Decoupling Ratemaking Mechanism. Duke states that each month, the utility will defer to a regulatory asset or liability account the difference between the actual revenue and the target revenue for the residential class. The regulatory asset or liability will accrue a return at the utility's last authorized weighted average cost of capital. Annual adjustments to the Annual

Decoupling Rider are designed to collect or distribute the amount in the regulatory asset or liability over a 12-month period.

Duke describes the purpose of the Annual ESM and PIMs Reviews as the annual proceeding to determine the amount, if any, of sharing necessary under the ESM, and distributions or collections necessary under the PIMs. Duke further describes its proposed rule regarding review of the annual ESM and PIM Riders. For the Annual ESM Rider, Duke states that the Commission would examine the earnings of the utility during the Rate Year to determine if the earnings exceeded the authorized rate of return on equity determined by the Commission in the proceeding establishing the PBR Plan. If the adjusted earnings exceed the authorized rate of return on equity plus 50 basis points, the excess earnings above the authorized rate of return on equity plus 50 basis points will be flowed back to customers in the Annual ESM Rider established by the Commission. Any penalties or rewards from PIMs incentives and any incentives related to DSM and EE measures are excluded from the determination of any sharing pursuant to the ESM. If the Commission determines an amount to be flowed back to customers pursuant to the ESM, the utility shall establish a regulatory liability. The Annual ESM Rider is designed to distribute the sharing amount over a 12-month period, including a return on the regulatory liability at the utility's last authorized weighted average cost of capital. For the Annual PIM Rider, Duke explains, the Commission would evaluate the performance of the utility with respect to Commission-approved PIMs applicable in the Rate Year. Any financial rewards would be collected from customers and any penalties distributed to customers, in each case, through the Annual PIM Rider established by the Commission. According to Duke, the Annual PIM Rider is designed to distribute or collect the penalties or rewards over a 12-month period and no interest accrues on the rewards or penalties.

Regarding the ESM, Duke's proposed rule allows the Commission to approve any additional appropriate pro forma adjustments used to determine the ESM during the PBR rate case rather than during an annual review. Leaving adjustments for the annual review process would not be desirable as it could turn the annual review into a full-blown rate case proceeding with various parties advocating for different adjustments, which would increase utility risk and eliminate regulatory efficiency that was anticipated by HB 951. Duke prefers to leave the pro forma adjustments to a rate case, so the Commission maintains flexibility to decide which adjustments are appropriate.

Duke also argues for use of the utility's actual cost of debt in determining the ESM, as it is a real cost that can change significantly over three years just like any other cost considered in the test year. Because actual debt costs change, the ESM should allow for this in calculating earnings.

The Public Staff states in its comments that its proposed rule sets out the requirements and procedures for the annual review of the MYRP, including decoupling, earnings sharing, and PIMs. The Public Staff notes it revised its rule to clarify the requirements for the earnings review to ensure that all earnings are properly considered.

The Public Staff acknowledges that in Duke's proposed rule Duke requires the Commission to approve templates for the calculations to adjust the ESM, PIMs, and Decoupling Riders. The Public Staff opposes this proposal, arguing that the use of templates alone oversimplifies the review that will be necessary to validate the estimates a utility proposes in its initial PBR filing. The Public Staff argues that the mere filing of a template would allow for only a basic mathematical verification. The Public asserts that there may be facts and circumstances at the time of the annual review that were unknown at the time of the PBR Application, when the templates were approved. Therefore, the Public Staff believes that these facts and circumstances should be considered when calculating the rider amounts, and the template process will be inadequate for this review. The Public Staff notes that Duke's proposal could be revisited for certain aspects of PBR (particularly decoupling) once the Commission and parties have more experience conducting the annual review.

In its reply comments the Public Staff notes that it has revised its proposed rule to allow an electric public utility to file its first quarterly report 60 days after the end of the three-month period, which is consistent with the Commission's requirement for a utility's E.S.-1 report filing. Further, the Public Staff has included requirements for the utility to report changes to approved capital spending projects.

The AGO argues that Duke's proposed rule regarding the review allowed under subsection (e) of the PBR Statute does not track the statute. According to the AGO, the PBR Statute allows review "with good cause," and, upon motion of the Commission or petition by the Public Staff, the Commission "may examine the reasonableness of an electric public utility's rates under a plan, conduct periodic reviews with opportunities for public hearings and comments from interested parties, and initiate a proceeding to adjust base rates or PIMs as necessary."

The Joint Intervenors disagree with Duke's proposal that the annual PBR review proceeding is limited in scope and duration such that it avoids turning the annual review process into a 'mini rate case.' The Joint Intervenors express concern that Duke's push for 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 at that time.

NCSEA asserts that Duke's concerns about an annual review turning into a "mini rate case" are unfounded. NCSEA notes that the general statute makes clear that "authorized periodic changes in base rates" do not require a general rate case application. Likewise, it is clear that the statutory intent is not for the PBR annual review process concerning "periodic changes in base rates" to include the requirements and scrutiny of a general rate case application.

Tech Customers express support for the Public Staff's proposed PBR rule that provide for appropriate stakeholder involvement in the annual review process.

In supplemental reply comments, Duke opines that the Public Staff added new provisions for the earnings review process that are contradictory and confusing and should be rejected.

Duke also objects to the Joint Intervenors proposals to create additional heightened review in the annual review process. Duke affirms that the express intent of the PBR Statute is to avoid subsequent annual rate cases and the annual review process should follow the clear parameters set out in N.C.G.S. § 62-133.16(c)(1)(c). Duke reiterates that the annual review is intended to be a verification of the calculations for the decoupling, ESM, and PIMs mechanisms. Further, Duke asserts with respect to capital projects previously authorized by the Commission, an annual review filing with schedules that provide the results and explanations for any major variances is most appropriate for this stage of the PBR Plan process. Duke argues there is no need to require a utility to file testimony as the Public Staff may interface with the utility during its audit to discuss any concerns or obtain more information concerning data included in the utility's annual review filing.

Duke also disagrees with the Joint Intervenors that all parties should have full intervenor status in the annual review process. Duke asserts that to the extent that any intervenors wish to participate in the annual review process, such participation should be consistent with the scope and purpose of the annual review, which is a verification and review process to validate adherence to the approved PBR Plan and report the electric utilities' earnings under the plan. Duke notes that the Public Staff is the appropriate entity to review and audit the annual review and that due to the scope and nature of the annual review testimony and exhibits is not necessary.

The AGO argues that Duke's proposal of for the annual review is a light-handed review of the PBR mechanisms. The AGO recommends that the Commission take a deliberative approach to establishing goals and projects, and not allow PBR proposals unless they are in the public interest and meet statutory factors and considerations.

DENC argues that multiple investigations of the reasonableness and prudence of the same items of cost of service would create regulatory uncertainty and unnecessary inefficiencies. DENC states that the Public Staff's initially proposed rule provided that the Commission shall conduct an annual review of a utility's earnings "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." DENC states it does not object to this rule. In its reply comments, however, the Public Staff adds subsection (j)(6) to that rule providing that, "No actions or recommendations of any intervenor in any MYRP earnings review and audit conducted pursuant to subsections (i)(2) or (i)(5) of this rule regarding the reasonableness and prudence of revenues, expenses, or items of rate base, nor any conclusion, finding, or ordering language of the Commission regarding such, shall preclude an investigation or Commission action in the utility's next general rate case regarding the reasonableness and prudence of the same items of cost of service." DENC opposes this provision, and the similar provision the Joint Intervenors recommend, stating that should a Commission order on a MYRP annual audit conclude that revenues, expenses, or items of rate base

are reasonable and prudent, the utility should be able to rely on that conclusion in bringing its next rate case and not be forced to re-litigate those findings.

DENC asserts that the Commission should reject any proposal that would unduly complicate the annual review process. DENC opposes the Joint Intervenors' proposed additional requirements for the annual PBR review process, including the filing of testimony and exhibits. DENC asserts that these proposals would add unnecessary procedure and take additional resources, ultimately resulting in mini-rate cases every year of a MYRP. Regarding the Joint Intervenors' proposal that "any interested party" be granted "full intervention status and rights" during the annual review process, DENC asserts that any interested party should utilize the Rule R1-19 procedure to intervene in a Commission proceeding and that intervenor status should not be automatic.

The Joint Intervenors agree with most of the Public Staff's proposed rule on the annual review process. The Joint Intervenors state that their proposed rule provides a few clarifications related to the MYRP rate adjustment procedure section of the Public Staff's proposed rule. They state the changes relate to the timing of testimony and exhibits on earnings in the annual review of the MYRP, justification and explanation for any changes or substitutions in plans for MYRP projects, and a requirement that capital spending projects be included in the annual review. The Joint Intervenors state that a clear and concise evidentiary record of testimony and exhibits, similar to the processes utilized in annual rider proceedings, are the most effective and efficient vehicle for MYRP annual review proceedings and that their proposed changes to the rules mimic the annual rider proceeding process, with testimony and exhibits entered into the record. The Joint Intervenors further assert that the MYRP annual review will eventually become more streamlined and less contentious, like the evolution of the rider proceedings.

The Commission finds that a utility shall file within 60 days of the end of a MYRP rate year the information necessary to conduct the annual review of the annual Decoupling, ESM, and PIMs riders. The PBR Statute requires the Commission to initiate the annual review within 60 days of the conclusion of each Rate Year.

In the interest of simplicity, the Commission requires that the utilities file all three annual riders within the same filing period. The Commission finds and concludes that the Public Staff shall file its analysis of the electric public utility's calculations for the annual Decoupling rider, ESM rider, and PIM rider for the Rate Year within 60 days of the utility's filing.

The Commission is not persuaded of the necessity for the parties to file testimony or exhibits in a MYRP annual review and declines to adopt such a requirement in the PBR Rule. The Commission also agrees that the MYRP annual reviews will become more streamlined and less contentious over time and the Commission will navigate matters as they arise.

The Commission adopts Duke's proposed rule regarding the Annual Review, as revised in the attached Rule. Appropriate adjustments to a utility's earnings for purpose

of an ESM, in addition to a weather normalization adjustment, will be decided in the rate case, and not written into the Commission's rules, nor left for litigation during an annual review. As the cost of debt is a cost that will fluctuate over time, it is just and reasonable for the parties to rely on the actual cost of debt during a Rate Year, rather than the possibly stale cost of debt during a PBR rate case proceeding.

Furthermore, the Commission finds and concludes, as discussed above in Issue 7, that it will not conduct further review of capital projects in the annual review. Therefore, the Commission declines to adopt proposals of the Public Staff and other intervenors regarding reconciliation of capital expenditures during the Annual Review.

The Commission is not persuaded at this time by Duke's assertion that the Annual Review should be a purely mathematical exercise involving the Commission's approval of formulaic templates. However, the Commission is also not persuaded that every Annual Review should be a full evidentiary hearing. The PBR Rule provides that the Commission order scheduling the Annual Review will set the procedure for that review. The scope of each Annual Review will be determined by the complexity of the issues presented. As with all proceedings before the Commission, the scheduling order will establish a period for parties to intervene in the proceeding and all intervenors will be able to participate in the proceeding. The Commission further notes that the Annual Review provided in subsection (g) of the PBR Rule reflects the yearly proceeding required in (c)(1)(c) of the PBR Statute. However, Duke, the Public Staff, and multiple intervenors proposed rules implementing the provision in subsection (e) of the PBR Statute that provides:

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 an electric public utility's rates under a plan, conduct periodic reviews with opportunities for public hearings and comments from interested parties, and initiate a proceeding to adjust base rates or PIMs as necessary

The Commission finds that a proceeding under subsection (e) of the PBR Statute is a separate proceeding from the Annual Review process and is reflected in subsection (e)(4) of Commission Rule R1-17B. The Commission Rule clarifies that the Commission may consolidate this type of proceeding into the Annual Review process if the facts of a particular proceeding warrant consolidation.

Issue 9: Rejection of PBR

Duke notes that the Commission's PBR Rulemaking Order requested comments from the parties to address, "[t]he process by which an electric public utility may address the Commission's reasons for rejection of a PBR Application, which process may include collaboration between stakeholders and the electric public utility to cure any identified deficiency in an electric public utility's PBR application." Duke's proposed rule outlines the procedures for a utility to cure any Commission-identified deficiencies if the

Commission rejects the utility's PBR Application. Duke's proposal includes language stating that the Commission shall provide a detailed explanation of the deficiency in its order, that the utility shall have no more than 90 days to cure the deficiency, and that the Commission shall issue an order on the resubmitted PBR Application 60 days after the utility files the proposed cure.

The Public Staff's proposed rule addresses the process for consideration of a PBR Application that has been rejected and refiled. The Public Staff asserts that because the reason for rejection may require small changes that can be reviewed quickly, or substantial changes that would require an involved investigation, discovery, and hearing, the proposed rule allows the Commission to establish the appropriate timing for the consideration of the refiled application based on its specific circumstances. The Public Staff's rule requires a utility to file its notice of intent to cure a rejected PBR within ten days, and to refile the PBR Application within 30 days of a Commission order rejecting a PBR Application.

CIGFUR states that pursuant to N.C.G.S. § 62-133.16(d)(3), "[i]f the Commission rejects the PBR Application, it shall provide an explanation of the deficiency and an opportunity for the electric public utility to refile, or for the electric public utility and the stakeholders to collaborate to cure the identified deficiency and refile." However, CIGFUR notes that the previous sentence in N.C.G.S. § 62-133.16(d)(3) provides in relevant part that "[i]n the event that the Commission rejects a PBR Application, the Commission shall nevertheless establish the electric public utility's base rates in accordance with N.C. Gen. Stat. § 62-133 based on the PBR application." Taken together, CIGFUR interprets these provisions to require that if the Commission rejects a PBR Application, it shall (1) nevertheless fix rates according to the traditional ratemaking paradigm codified in N.C.G.S. § 62-133; but also (2) provide the reasons for such rejection and inform the electric public utility regarding the process by which the utility may, in its sole discretion, attempt to cure and subsequently refile the PBR Application, which, if approved, would supplement the rates already fixed by the Commission under N.C.G.S. § 62-133.

CIGFUR further interprets these provisions to give wide latitude to the Commission in determining, on a case-by-case basis, what constitutes a deficiency and how utilities may cure deficiencies. CIGFUR maintains that to preserve such latitude consistent with legislative intent, any rule the Commission adopts pertaining to procedures to cure a rejected PBR Application not be overly prescriptive, in order to afford the Commission flexibility to tailor the curing process to the unique set of facts and circumstances at issue in any deficiencies the Commission identifies.

CIGFUR notes that although it believes flexibility and preservation of Commission discretion are key to implementing the PBR Statute, CIGFUR nevertheless recommends that there be a temporal limit on the curing and refiling process in the event of a rejected PBR Application. CIGFUR states that a temporal limit is necessary for the utility and all other parties to the proceeding to have certainty regarding the posture of the case and the effects and finality of the Commission's decision. CIGFUR recommends that any curing process, which may or may not include a directive for the utility to collaborate with

stakeholders, not exceed 60 days following the date the Commission issues an order rejecting a PBR Application. CIGFUR further recommends that the time limit for the utility to otherwise cure and refile a rejected PBR Application not exceed 30 days, meaning a 90-day total curing process and opportunity for refiling if the Commission directs collaboration with stakeholders and a 30-day total curing process and opportunity for refiling if not.

CIGFUR also contends that if an electric public utility attempts to cure and then subsequently refile the PBR Application previously rejected or directed to be modified by the Commission, the time frame for implementation of the utility's proposed base rates restarts, with another 300-day clock beginning to run on the date the utility refiles its cured PBR Application following rejection or modification by the Commission.

Finally, CIGFUR offers suggestions regarding the facilitation of any stakeholder process the Commission may direct should a PBR Application need to be cured. CIGFUR states that because such a process will be occurring in the context of a contested rate case, the impartiality of the person or entity charged with facilitating the stakeholder process is critically important to the success of the process and ensuring that any resulting recommendations or reports are balanced, fair, and transparent. CIGFUR recommends that the Commission empower the facilitator of any stakeholder collaborative to exercise its independent professional judgment at all times, and that no advocate — be it the applicable electric public utility or any intervenor — be allowed special access to, or influence and control of, the third-party facilitator. CIGFUR states that when stakeholders perceive that the facilitator is beholden to one or more parties, it creates the appearance of a conflict of interest and serves to inject bias into the process, thereby undermining the credibility of the process and tainting any results that may stem therefrom. To avoid this, CIGFUR respectfully recommends that the Commission select, retain, and direct any third-party facilitator, and that the facilitator report directly to the Commission.

CUCA engaged the consulting services of Synapse Energy Economics, Inc. and filed Synapse's report. CUCA states that when the Commission rejects a PBR Application, it should require the utility to address each of the Commission's identified deficiencies in a refiled application and to work with stakeholders, where appropriate, to remedy those deficiencies. CUCA maintains that the Commission should also require the utility to respond to discovery requests filed by the Commission or intervenors regarding any modifications made. CUCA asserts that stakeholders should then have an opportunity to file responsive testimony addressing whether the utility's modifications to its application are adequate.

In reply comments Duke disagrees with CIGFUR's proposal that if the Commission rejects a utility's PBR Application and the utility elects to attempt to cure it, the timeframe for implementation of the utility's proposed base rates restarts (i.e., a new 300-day clock would begin to run as of the date the utility refiles the "cured" PBR Application). Duke argues that this is clearly not the intent of the PBR Statute and maintains that if the Commission rejects a PBR Application, the utility would still implement base rates under traditional ratemaking.

Duke asserts that since there is no PBR plan in place, the utility is free to file a new PBR Application instead of curing the deficiencies of the rejected application. It states that, therefore, having the timeline for review of a cured application be the same as for a new application basically nullifies the PBR Statute's provision that a utility has an opportunity to cure a deficiency. Duke argues that there would be no incentive to work with stakeholders to cure if rejection of a PBR Plan resets the clock; instead, the utility may be better off filing an entirely new PBR Application. Duke asserts that this would be inefficient and a waste of the parties' resources.

Duke states that the provision for a utility to be able to cure deficiencies in a rejected PBR Application was part of the draft PBR legislation the NERP recommended. It notes that an earlier version of the legislation did not provide the Commission the ability to direct that the utility to modify a PBR Application, only to approve or reject. Duke states that in the NERP discussions, stakeholders expressed frustration that they might go through an entire PBR docket, and if the Commission rejected the PBR Application, all their efforts to implement a PBR framework would be wasted. Duke notes that in response to that concern, the NERP added the provision allowing a process to cure deficiencies to the proposed legislation. Duke maintains that CIGFUR's proposal would nullify this provision.

Duke notes that CIGFUR also suggests that an independent and impartial third party facilitate the stakeholder process following the rejection of the PBR Application. Duke believes that this would add time and expense to the process, which should be a quick attempt to cure, not a redo of the initial rate case as CIGFUR seems to suggest.

In reply comments, Tech Customers support the Public Staff's proposed process for curing a rejected PBR Application.

The Commission is not persuaded that CIGFUR's suggestion that if a utility attempts to cure a rejected PBR Application a 300-day clock would begin to run as of the date the utility refiles the "cured" PBR Application is consistent with the PBR Statute. The Commission agrees with Duke that having the same process for review of a cured application as for a new application nullifies the PBR Statute's provision that a utility have an opportunity to cure a deficiency. The Commission further agrees that if a utility seeks to cure a rejected PBR Application, the base rates established pursuant to N.C.G.S. § 62-133 will be in place at least until further order of the Commission.

The Commission agrees with Duke that CIGFUR's suggestion that an independent and impartial third party facilitate the stakeholder process following the rejection of a PBR Application would add time and expense to the process, which should be a quick attempt to cure, not a redo of the initial rate case. The Commission declines to adopt CIGFUR's recommendation.

The Commission agrees with the Public Staff that because the reasons for rejection of the PBR Application may require different degrees of investigation, discovery, and hearing for resolution, the PBR Rule should allow the Commission to establish the

appropriate timing for the consideration of the refiled application based on its specific circumstances. Also, the Commission agrees with CIGFUR's comment that the PBR Rule governing the procedure should not be overly prescriptive in order to allow the Commission flexibility.

In addition, the Commission notes that the PBR Statute provides that the Commission shall provide the utility an opportunity to cure the deficiencies and refile a rejected PBR Application, and the process to cure the deficiencies may provide the utility and the stakeholders an opportunity to collaborate. The Commission's interpretation is that it is within its discretion for each rejected PBR Application to direct, at that point in time, whether the utility should cure the deficiency *or* if the electric public utility and the stakeholders should collaborate to cure the identified deficiency and refile. The Commission will make this determination on a case-by-case basis in the order rejecting the utility's proposed PBR Application.

The Commission is not convinced that the 30-day timeframe the Public Staff proposes in its rule would allow adequate time for potential stakeholder involvement in the process. However, the Commission agrees that there should be a temporal limit on a utility attempting to cure a deficiency. Therefore, the Commission Rule adopted herein provides that the time period allowed for a utility to refile a cured PBR Application will be set in the Commission order rejecting the PBR but will not exceed 90 days.

Issue 10: Reporting Requirements

In its initial comments, Duke states that it is important to find the right balance of regulatory oversight, transparency, and review, while fulfilling the intended goals of reducing the rate case burden on all stakeholders, allowing utilities to focus on clean energy goals without the burden of unnecessarily onerous regulatory requirements, and providing stable rates for customers. Duke further states that it proposes to utilize three riders for annual review to facilitate transparency and ease of administration. In its reply comments, Duke opposes the suggestions of NCSEA, discussed more fully below, that there be monthly reporting requirements for PBR rate plans and requirements for utilities to submit detailed plans and support for proposed PBR investments. Duke argues that quarterly reporting would provide the Commission with the most useful information for evaluating PBR Plan performance, and notes that it already provides the Commission with E.S.-1 surveillance reports quarterly.

In its proposed rule, the Public Staff requires quarterly reports in addition to the annual review filings. The focus of the quarterly reports is primarily: (1) an earnings report; (2) a construction status report; and (3) a report tracking changes to any capital spending projects approved by the Commission for inclusion in the MYRP. This proposed quarterly reporting requirement for an approved PBR Application is consistent with the current provision of quarterly E.S.-1 surveillance reports by the electric public utility.

NCSEA in its initial comments, advocates for monthly reporting of at least: (1) specific tracking metrics and supporting data used to assess PIM performance;

(2) average customer class data, including the monthly actual revenue and target revenue for the residential customer class decoupling mechanism; and (3) a monthly surveillance report, like the quarterly surveillance reports generated by Commission E.S.-1 report. NCSEA also wants monthly accounting of deferral between actual and target revenue for the residential class. NCSEA also recommends that reports include supporting data in native format with formulas intact and working macros and be filed publicly on a Data Dashboard.

Duke in its reply comments does not support the Public Staff's additional reporting requirements, but states that the E.S.-1 reports would already capture much of this information. Duke recommends that if the Commission adopts the Public Staff's proposed reporting requirements it only require the information to the extent that it is not already included in the E.S.-1 report filings. Separately, Duke objects to elements of the Public Staff's rules that require filing of information on a rate class and rate schedule level. Currently Duke spends four to five months compiling annual cost of service studies that report this information and says it would be infeasible to provide this information on the Public Staff's proposed 45-day timeline and would be extremely burdensome and unnecessary to do so every quarter. Further, the annual review process does not require this information by rate class, and individual capital projects would not be allocated by customer class even in a full rate case.

In reply to NCSEA, Duke opposes monthly reporting requirements, and says quarterly will provide the most useful information for evaluating PBR Plan performance.

The Commission determines that quarterly reporting for the approved PBR Application is appropriate and strikes the correct balance between the Commission's oversight obligation and the burden on the utility to provide the information. The electric public utility should file quarterly reports for each three-month period of the PBR Plan Period. The utility should make the first filing no later than 60 days after the first three-month period, and file subsequent reports every three months thereafter. Except for certain information being subdivided by rate class and rate schedule, the Commission adopts the Public Staff's proposed rule regarding the content of quarterly reports as modified in this Order. The Commission rejects Duke's proposal that the Commission only require the electric public utility to file quarterly information concerning its PBR Plan Period to the extent the information is not already included in the E.S.-1 reports. Although the content and format of the E.S.-1 reports may satisfy some of the quarterly reporting requirements approved herein, the three-month reporting periods will not necessarily be the same. The Commission agrees with Duke that Duke shall not have to provide certain elements of the reporting requirements on a rate class or rate schedule level as such level of granularity is not required due to the Commission's decisions concerning the PBR Rule reflected elsewhere in this Order.

Issue 11: Rates After Plan Period

Duke's proposed Revised Rule R1-17 from its initial comments provides that if an electric public utility does not file a general rate case or PBR Application to be effective

after the final Rate Year of a PBR Plan Period, the “Earnings Sharing Mechanism, and Decoupling Ratemaking Mechanism effective for the final Rate Year will continue until the effective date of Commission-approved base rates from a subsequent general rate case.”

In its proposed rule filed with initial comments, the Public Staff proposes that following the expiration of a PBR Plan Period, the rates of the final year “remain in effect until further order of the Commission.”

CIGFUR argues that the express statutory intent for rates in effect after the end of the PBR Plan Period is clear and that PBR constitutes an exception to the traditional cost of service regulatory paradigm that would normally apply in the absence of a Commission-approved PBR Plan. If a three-year PBR Plan expires without a new one to replace it, the MYRP and the attendant third year rates become null and void, and rates must revert to those fixed pursuant to N.C.G.S. § 62-133. According to CIGFUR, the fact that the General Assembly required Commission pre-approval of the projected incremental capital investments that will be used and useful during the rate year as the basis for setting rates during the first, second, and third Rate Years of a MYRP further supports its argument.

NCSEA states that, at the end of the MYRP period, rates should be reset “in a manner reflective of the bargain of House Bill 951,” which sets up the utility to file a subsequent PBR Application. NCSEA asserts that, for the purposes of a procedural run-of-show, the annual true-up and related proceedings for the third year of the MYRP should go on into the next year, which will likely be the first year of a subsequent MYRP period. NCSEA states that the policy goals addressed by the PBR Application will change, but the annual true-up proceeding will not disrupt any new Policy Consideration Docket and subsequent PBR Application. Thus, NCSEA proposes that the annual true-up proceedings occur independently of any new PBR Application and related MYRP and in the same procedural manner as in the previous rate year.

NCSEA notes that N.C.G.S. § 62-133.16(f) states that approved PBR Applications shall be effective for no more than 36 months, but that the statute does not address what happens upon the expiration of a PBR Plan Period. NCSEA argues that at the termination of a PBR Plan Period rates should revert to those that are set pursuant to N.C.G.S. § 62--133. N.C.G.S. § 62-133.16(d)(3) states that a PBR Application shall be submitted in conjunction with a general rate case application. Thus, according to NCSEA, the Commission will be setting rates using a historical test year pursuant to N.C.G.S. § 62-133, in addition to the rates set pursuant to N.C.G.S. § 62-133.16. Practically speaking, the legislation requires that the Commission set four sets of rates in a PBR proceeding: (1) rates using a historic test year in accordance with N.C.G.S. § 62-133; (2) rates for the first year of the MYRP; (3) rates for the second year of the MYRP, and (4) rates for the third year of the MYRP. NCSEA argues that there is no support in the statute for the notion that, when a PBR Plan Period expires, customer rates should continue at the levels set for the second or third year of a PBR Plan Period. Rather, the General Assembly directed that a PBR rate case be overlaid on a general rate case. Rates set pursuant to a PBR Application expire after 36 months, but rates set pursuant to a general rate case do not expire.

NCSEA further argues that equity requires that rates revert to the rates set pursuant to N.C.G.S. § 62-133 at the termination of a PBR Plan Period. Rates under either section of the statute are to be fair to both the utility and to the consumer. N.C.G.S. § 62-133.16 departs from the “used and useful” ratemaking paradigm by creating a “bargain” between utilities and consumers that allows the utility to recover costs associated with certain capital investments and gives the consumer policies that incent the utility to improve its performance via PIMs. Since under N.C.G.S. § 62-133.16(f) PIMs expire after 36 months, after that expiration consumers would not be receiving their benefit of the bargain. NCSEA argues that N.C.G.S. § 62-133.16(d)(3) also supports this position. If the Commission rejects a PBR Application and it never goes into effect, the utility’s rates will be set in accordance with N.C.G.S. § 62-133. By analogy, when the PBR Plan Period expires, the PBR Application is no longer “in effect,” which has the same practical impact as if the Commission had rejected the PBR Application, and N.C.G.S. § 62-133.16(d)(3) dictates that the rates set pursuant to N.C.G.S. § 62-133 shall go into effect upon the expiration of the PBR Plan Period. In its reply comments, NCSEA reiterates its position that the plain language of the PBR Statute requires that rates revert to those set pursuant to N.C.G.S. § 62-133, but notes that the Public Staff’s position and revised rule as set out in the Public Staff’s reply comments does address NCSEA’s concerns with respect to utility overearning pursuant to rates set via overestimated forecasted costs.

In reply comments, Duke states that the base rates effective in Year 3 of the MYRP should remain effective after the expiration of a PBR Plan. According to Duke, base rates should not be reset or reduced because doing so would be punitive to utilities and place them in a worse position than when they originally filed the rate case to approve a MYRP, which would immediately necessitate a new rate case filing. Duke argues that the PBR Statute does not support the intervenors’ recommendations, which would deny rate recovery for capital investments that have been approved as reasonable and prudent by the Commission. Duke also contends that the intervenors have not identified any states in which base rates are adjusted to deny rate recovery of approved prudent and reasonable investments, and that Duke’s proposed rule is fair to customers and the utility because it continues Year 3 base rates but also continues the ESM, which Duke asserts protects customers, and the decoupling adjustments. Duke envisions that, if the utility does not file a general rate case or successor PBR Application to become effective after the final rate year, any approved PIMs shall expire but the Year 3 base rates and the ESM and Decoupling ratemaking mechanisms for the final rate year will continue until the effective date of Commission-approved base rates from a later general rate case. The utility would continue to file an Annual ESM and PIMs Review Report for each 12-month period after the end of the last rate year of the PBR Plan for the ESM and continue to file annual adjustments to the Decoupling Ratemaking Mechanism.

In replying directly to CIGFUR’s comments, Duke argues that the limited duration of a PBR Plan Period is intended to limit the time period over which incremental capital investments are projected. One of the benefits of a MYRP is creating a cost recovery mechanism for smaller capital investments required to achieve the state’s policy goals without necessitating frequent rate cases, but this must be balanced with the need for a

MYRP to be limited to a period in which a utility can accurately forecast future capital spending projects for forward-looking rate years. Duke states that the legislature determined that a three-year period struck the right balance, but argues that limiting the period of time over which the utility's projected capital investment plans are to be considered to three years is a different policy issue than whether Commission-approved rates should be discarded at the end of the MYRP, effectively denying recovery of prudent costs and forcing the utility to file a rate case even where it might not be necessary if the Year 3 rates remained in place. Further, reverting to stale rates based on a four-year-old historical test year is punitive and exposes the utility to increased regulatory lag when compared to traditional ratemaking.

Duke notes that the Public Staff agrees that allowing Year 3 rates to remain effective after expiration of the PBR Plan Period minimizes rate cases while preserving customer protections and preventing utility overearning through continuation of the ESM. CIGFUR's proposal would essentially guarantee rate case filings in the third year of the MYRP to ensure that new rates are in place by the end of the plan period. This outcome would thwart the policy goals of HB 951 and PBR, including the utilities' ability to receive more timely rate recognition of smaller capital investments needed to facilitate the energy transition.

The Public Staff, in its reply comments, states that it would be inconsistent to require that rates be reset to the base rates set in the general rate case instead of continuing at the then existing base rates because the second sentence of N.C.G.S. § 62-133.16(c)(1)(a) includes the language referring to "subsequent changes in base rates in the second and third rate years of the MYRP," which indicates that the base rates change in each year of the MYRP. The Public Staff also states that the practical impact of setting rates back to those set in the general rate case would be to force the utility to file a rate case.

The Public Staff notes that Duke proposes in its rule that earnings sharing and decoupling would continue after a MYRP expires, but the Public Staff believes that under the PBR Statute these mechanisms would not continue outside of the MYRP. The Public Staff argues that if the Commission determines that decoupling could continue, it would be appropriate that earnings sharing also continue.

To address concerns regarding utilities overearning and the time necessary to rectify such a situation, the Public Staff includes a new requirement in its proposed rule that a utility with an approved MYRP file notice of its intent to file a subsequent rate case 300 days prior to the expiration of the MYRP, and that the Commission initiate a review of the utility's rates pursuant to its authority under subsection (e) of the PBR Statute¹ if the utility indicates that it does not intend to file a rate case application for new rates to go into effect when the MYRP expires.

¹ The Public Staff proposal and the references of other parties to this Public Staff proposal, cite to N.C.G.S. § 62-16(e), a repealed statute. Based on the context of this provision, the Commission determines the reference was intended to be to N.C.G.S. § 62-133.16(e), the PBR Statute.

The AGO disagrees that a rate increase established for Year 3 of a MYRP should be allowed to continue in effect if the Commission has not approved a new PBR Plan at the end of the MYRP period. The AGO notes that the PBR Statute limits a PBR Plan to 36 months and cautions against assuming that rate increases based on forecasts for specific projects authorized in a MYRP justify ongoing rates at that level, especially given the shorter lives of assets likely to be included as projects. The AGO contends that given the utilities' shifting away from building large power plants and toward smaller and more frequent investments for grid improvements and distributed energy resources, at the end of 36 months the investments no longer support the rate increases allowed in the PBR plan. The AGO argues that the rate in Year 3 is no longer authorized as part of a PBR Plan after the plan period ends, and base rates should take effect unless the Commission has authorized another plan. According to the AGO, all PBR mechanisms should terminate, and the Commission should allow only the review and true-up to adjust rates for riders relating back to the PBR Plan Period.

CIGFUR also supports a reversion to traditional rates based on cost of service upon the expiration of a PBR Plan Period. If the Commission disagrees, CIGFUR notes the importance of protecting ratepayers from the possibility of the utility being allowed to overearn if third year MYRP rates remain effective after the expiration of a MYRP. Therefore, if the Commission declines to mandate the reversion to traditional rates, CIGFUR alternatively supports the Public Staff's proposal to require that at least 300 days before the expiration of an MYRP, the utility notify the Commission of when it intends to file a general rate case, with or without a PBR Application, and the requested effective date of new base rates. CIGFUR also alternatively supports the Public Staff's proposal that if the requested effective date of new base rates is after the MYRP's expiration date, the Commission conduct a review for reasonableness of the utility's rates pursuant to its statutory authority.

CUCA submits the recommendations of Synapse, one of which is that at the conclusion of a MYRP term, the Commission should ensure that the utility's ability to recover costs is balanced with customer protections. If customer protections end, rates should be established based on the general rate case using a historical test year approach, rather than the MYRP adjustments. CUCA asserts that the PBR Statute makes clear that the General Assembly intended with the MYRP mechanism to provide an electric utility the opportunity to obtain immediate recovery for certain specified and approved capital expenditures through a special rate additive that would operate outside the normal rate-setting processes. The MYRP is an additive to base rates rather than a component of base rates. According to CUCA, the statute is clear that every aspect of a PBR Application should expire together at the end of its term. When a MYRP expires, rates should revert to amounts last approved in a general rate case. It would be unfair to ratepayers to allow the utility to extract one favorable piece — the MYRP final third-year rates.

DENC argues that, upon expiration of a PBR Plan Period, utility rates should stay at the level approved for the final year of the MYRP. The MYRP will represent a significant investment of time and resources by the utility, the Commission, the Public Staff, and

others. Its final year will reflect ESM, decoupling, and PIM-related adjustments to the originally approved PBR rates and will be the most accurate reflection of the utility's ongoing level of required revenue. DENC supports the Public Staff's proposed rule. DENC opposes the suggestions of CIGFUR and NCSEA that rates revert to rates fixed under the last traditional rate case at the expiration of the PBR Plan Period, arguing that such a practice would waste all the time and resources expended to implement HB 951 and nullify the statute's provision for the establishment of rates that more precisely reflect a utility's capital investments during each year of that period.

The Joint Intervenors suggest that the Commission consider requesting supplemental briefing on the "Year 3 Issue" as it represents a novel issue of law involving the construction of a newly enacted statute. Alternatively, they suggest that the Commission need not resolve this issue by February 10, 2022, and could resolve it after adopting rules. The Joint Intervenors argue, however, that the position that a utility's third year MYRP rates should continue in perpetuity upon the conclusion of a MYRP is counter to the language in the PBR Statute and would lead to imbalanced results for ratepayers. According to the Joint Intervenors, the PBR Statute is clear that every aspect of a PBR Application should expire together at the end of the maximum 36-month period, and the 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 a MYRP expires. The Joint Intervenors state that the statute conceptualizes a PBR Application as a single, indivisible unit comprised of three elements: (1) a decoupling ratemaking mechanism; (2) one or more PIMs; and (3) a MYRP, all of which survive as a unit for up to three years, when it expires as a unit. Nothing in the statute permits the Commission to separate those elements or allow one element to survive while others expire.

The Joint Intervenors note that the NERP report also did not contemplate that third year MYRP rates would continue beyond the MYRP period. Further, other jurisdictions that use or have considered PBR tools, including MYRPs, have adopted inconsistent approaches for what happens after a MYRP ends. The Joint Intervenors argue that Duke proposes to be able to drop one unwanted component of the PBR package (the PIMs) while being allowed to continue with the other two components, but that the statute does not contemplate such disaggregation. The Joint Intervenors state that Duke appears to be confused over the term "base rates" in its proposed rule, reading the statute as if a MYRP establishes new "base rates" (which can only be established through a general rate case) rather than adjustments to base rates. The MYRP additive is in addition to, and separate from, base rates, like other rate adjustments authorized by statute and approved by the Commission. Similarly, the MYRP has two inseparable elements: the mechanism for setting rates and the mechanism for earnings sharing. The statute defines a MYRP as a ratemaking mechanism under which the Commission sets base rates for a multiyear period . . . along with an ESM. Separation of utility rates from an accompanying ESM would defy the plain language of the statute and would remove the utility's incentive to maintain cost-efficient service and improve performance. The Joint Intervenors argue that, if the Commission permits Duke to extend the MYRP rates while the ESM expired, it could lead to a windfall for the utility when ratepayers would continue to pay rates set pursuant to forecasted costs with no protection against overestimating forecasted costs,

leading to over-recovery and overearning on those same costs. Finally, the Joint Intervenor contend that the plain language of the statute makes clear that MYRP rates are not to continue beyond the expiration of a PBR Plan Period.

The Joint Intervenor assert that Duke's proposal also weakens Commission oversight and exposes ratepayers to unnecessary risks. The Joint Intervenor are concerned that Duke's proposed continuation of MYRP rates with a superficial annual review process could diminish the effectiveness of using prudence and reasonableness reviews to ensure that the interests of ratepayers are balanced against the utility's interests. Under Duke's proposed scenario, it would have every incentive to stay out of general rate cases as long as possible while over-recovering and overearning. The Joint Intervenor propose that following the end of the PBR Plan Period the decoupling, ESM, and PIMs riders are no longer effective, and the base rates should take effect.

Tech Customers agree with CIGFUR and NCSEA that the PBR rule should specify that when a MYRP expires, the utility's rates revert to the last rates approved through a general rate case. Tech Customers note that the statute limits a PBR Application to proposing "revenue requirements and base rates *for each of the years that a MYRP is in effect* or a method for calculating the same." Further, the statute states that approved PBR Applications shall remain in effect for not more than 36 months and requires that the application address a first Rate Year, a second Rate Year, and a third Rate Year. It does not allow the utility continue rates after the end of the third Rate Year of the MYRP.

Tech Customers also assert that a utility cannot isolate one aspect of an approved PBR to continue beyond the three-year period. The components come into existence together, and they expire together. The PBR Statute does not empower the Commission to continue a PIM beyond three years, and a utility cannot continue a decoupling mechanism beyond three years. Similarly, the Commission cannot authorize a utility to continue the MYRP rates beyond three years. Finally, Tech Customers contend that reading the statute to separate a MYRP from an ESM is inconsistent with the statutory definition of a MYRP as "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." Likewise, according to Tech Customers, the statutory definition of "performance-based regulation" makes clear that a MYRP necessarily includes an ESM. The statute does not contemplate a situation where MYRP rate increases continue in perpetuity without an ESM to protect ratepayers against overearning.

Duke reiterates in its supplemental reply comments that the statute is clear that rates set through the MYRP are base rates, established on a set of reasonable and prudent projected investments approved by the Commission, and it would be an unprecedented outcome for base rates to be automatically adjusted downward. Duke argues that the new proposal in the Public Staff's reply comments functionally defeats the statutory interpretation and policy arguments that the Public Staff's reply comments affirm. While affirming that the PBR Statute does not contemplate reversion of base rates

to pre-MYRP rates or forcing a rate case, the Public Staff revises its proposed rule to require the Commission to initiate a review of rates at the end of the MYRP under subsection (e) of the PBR Statute if the utility does not intend to file a rate case at the end of the MYRP, and to establish new base rates effective upon expiration of the MYRP. Duke states that this is essentially a new requirement for a mandatory rate case during the final year of the MYRP, which has no basis in the statute.

DENC, in its supplemental reply comments on the Year 3 Issue, also addresses the Public Staff proposal for a review of rates under subsection (e) of the PBR Statute during the final year of the PBR Plan. DENC argues that the practical result of this provision would be that the rates in effect during the last year of the MYRP would only continue in effect until the Commission establishes new base rates based on an investigation. DENC opposes such an outcome, arguing that the final year of the MYRP will reflect ESM, decoupling, and PIM-related adjustments to the originally approved PBR rates and will represent the most accurate reflection of the utility's ongoing level of required revenue. Also, DENC notes, the Commission already has authority to institute review of rates, so the Public Staff provision is unnecessary and would lead to more frequent rate cases since the Commission would be required to review rates upon expiration of a MYRP, regardless of whether there was any indication of a need for review. DENC asserts that the proposal, when combined with the Public Staff proposed schedule for PBR Applications, would likely always result in a Commission investigation because it would be impossible for the utility to file another rate case with rates to take effect at the end of the MYRP based on the proposed schedule. Also, DENC argues it would be unreasonable to expect the utilities to provide public notice of future rate case plans almost a full year before the end of a three-year rate period.

The Commission agrees with the Public Staff, Duke, and DENC that the rates in effect at the end of the final year of the PBR Plan Period remain in effect until further order of the Commission. The Commission notes that an order granting a change in rates typically approves an annual revenue requirement and a schedule of rates attached as appendices. The schedule of rates becomes effective for utility service rendered on and after the issuance date, or a date otherwise provided in the order. The Commission anticipates using a similar process to approve the rates under a PBR Application. An order approving a PBR Application will approve an annual revenue requirement and a schedule of rates for each year of the PBR Plan Period. As stated in the PBR Rule approved herein, the rates in effect at the end of the final Rate Year of an approved PBR will remain effective until otherwise ordered by the Commission.

The Commission agrees that the PBR Statute does not support the intervenors' recommendation to revert rates to base rates set in accordance with N.C.G.S. § 62--133. The reversion to rates that do not reflect the increase in capital costs approved in the PBR Application would deny rate recovery for capital investments that have been approved as reasonable and prudent by the Commission. The Commission agrees that the limited duration of an approved PBR Application is intended to limit the time period over which incremental capital investments are projected, not to foreclose the recovery of approved rates past the final Rate Year of the PBR Plan Period.

In addition, the reporting requirements found in subsection (h) of the PBR Rule will continue after the PBR Plan Period. If the utility is overearning, or if the reports show any other issues with the capital projects approved under the PBR Application, the Public Staff or any other party can file a petition under N.C.G.S. § 62-136 to request the Commission investigate the rates.

The Commission is not persuaded that the PBR components of decoupling, ESM, or the PIMs rider continue after the final Rate Year of the PBR Plan Period. Duke offers no explanation for why its proposed rule continues the ESM and the Decoupling Mechanism, but not the PIMs, after the PBR Plan Period. The Public Staff states that it believes these mechanisms do not continue after the PBR Plan Period and that if the decoupling provision continues, so should the Earnings Sharing Mechanism.

The PBR Rule the Commission adopts herein provides that, unless otherwise provided by Commission order, the ESM Rider, Decoupling Rider, and PIM Rider shall be reset to \$0 at the end of the PBR Plan Period, after the 12-month period of recovery of the final year adjustment authorized by the Commission under the Annual Review process. The PBR Rule leaves open the possibility that a party may provide persuasive evidence in a future PBR Application filing to justify the continuation of any of the PBR components past the PBR Plan Period.

Conclusion

Based upon the foregoing and the entire record in this proceeding, the Commission adopts Rule R1-17B, as set forth in Appendix A to this Order, effective as of the date of this Order. The Commission notes that while the Rule is effective, there are outstanding issues that the Commission will address as the electric public utilities, the Public Staff, other intervenors, and the Commission move forward in this new regulatory environment.

The Public Staff proposes a template notice to customers of the PBR Application as part of its proposed rule. The Commission directs Duke, DENC, and the Public Staff jointly to propose a template notice to customers in conformity with Commission Rule R1-17B as adopted in this Order.

In addition, the Commission requests comments on the impact of the PBR process on the certificate of public convenience and necessity (CPCN) for any capital project that is approved as part of a PBR Application. In particular, the Commission would like parties to address the following questions:

(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;

(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; and

(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.

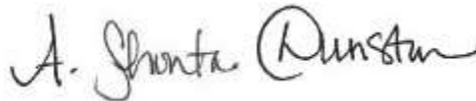
IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R1-17B, as attached in Appendix A, is approved and effective as of the date of this Order;
2. That Duke, DENC, and the Public Staff shall file a template notice to inform customers of the PBR Application on or before March 16, 2022;
3. That other parties may comment on the template notice by April 13, 2022;
and
4. That all parties shall file comments on the questions outlined by the Commission related to CPCNs and capital projects approved for cost recovery in a PBR Application on or before March 16, 2022, and reply comments, if any, on or before April 13, 2022.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of February, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "A. Shonta Dunston". The signature is written in a cursive, flowing style.

A. Shonta Dunston, Chief Clerk

**R1-17B PROCEDURE FOR PERFORMANCE-BASED REGULATION FOR
ELECTRIC PUBLIC UTILITIES UNDER G.S. 62-133.16.**

(a) Purpose. – This rule provides the procedures for the approval and administration of Performance-Based Regulation authorized under G.S. 62-133.16.

(b) Definitions. – As used in this rule, the following definitions shall apply:

- (1) “Cost Causation Principle”; “Decoupling Ratemaking Mechanism”; “Earnings Sharing Mechanism”; “Multiyear Rate Plan” or “MYRP”; “Performance Incentive Mechanism” or “PIM”; “Performance-Based Regulation” or “PBR”; “Policy Goal”; and “Tracking Metric” shall have the same definitions as provided in G.S. 62-133.16(a).
- (2) “Plan Period” shall mean the period of not more than 36 months covered by an approved PBR application.
- (3) “Rate Year” shall mean each 12-month period of the MYRP for which base rates as established by G.S. 62-133 and modified by G.S. 62-133.16, are effective.

(c) Technical Conference. – No later than 90 days before an electric public utility gives notice that it intends to file a general rate case that includes a PBR application, the electric public utility shall file a request with the Commission to initiate a technical conference regarding the projected transmission and distribution projects to be included in the PBR application. The Commission will schedule one or more sessions of the technical conference to be conducted within 60 days of receiving a request for a technical conference. The following apply to the technical conference process:

- (1) Any party that desires to participate in the technical conference process shall provide notice to the Commission no later than 15 days prior to the first session of the technical conference. All parties will be provided an opportunity to provide comment and feedback on the electric public utility’s technical conference information in the manner prescribed in the Commission order scheduling the technical conference process.
- (2) No later than ten business days before the first session of the technical conference, the electric public utility must file the following information on projected transmission and distribution projects to be included in the PBR application:
 - a. A comprehensive list of programs and major projects accompanied by, for each program and project, the purpose (e.g., capacity increase or reliability), a timeline for construction including the estimated placed in-service date, projected costs, cost-benefit analyses, and any other information, justifying each program and project. Cost benefit analyses shall not be required if a program or project is required by law; and
 - 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.

(d) Filing Requirements. – An application for a PBR must be filed with a general rate case proceeding initiated under G.S. 62-133, and must comply with Rule R1-17 unless otherwise provided in this Rule. Supporting data and work papers for the information provided by this section shall be provided to the Commission, Public Staff, and any other party to the proceeding. An electric public utility seeking approval of PBR must file the following:

- (1) A proposed Decoupling Ratemaking Mechanism that includes the following:
 - a. The applicable residential rate schedules and riders eligible to be affected by the decoupling.
 - b. The proposed target annual revenue requirement per residential customer unit for each Rate Year, with weather normalization, along with the electric public utility's underlying assumptions, calculations, and methodology.
 - c. Proposed distribution of the weather normalized per residential revenue requirement for each month in each Rate Year, along with the electric public utility's underlying assumptions, calculations, and methodology.
 - d. The projected number of residential customers for each Rate Year, along with the projected number of residential customers for each month of each Rate Year, and an explanation of the calculation or methodology for determining the projected number of residential customers for each month.
 - e. The proposed method for calculating and deferring differences realized between the estimated and actual revenue per customer, including the proposed accounting entries for decoupling true-up entries.
 - f. 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, including the 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 electric public utility's underlying assumptions, calculations, and methodology.
- (2) A proposed MYRP that includes the following:
 - a. A concise, plain statement of the changes in base rates and the time when the change in rates will go into effect with schedules for each Rate Year of the MYRP in the same manner required pursuant to G.S. § 62-134(a).
 - b. A forecast of the weather-normalized revenues and costs for each Rate Year of the MYRP including detailed supporting workpapers.
 - 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 detailed supporting workpapers.

- d. A forecast, for each year of the MYRP, of the kWh sales, kilowatt (kW) load (coincident peak demand, non-coincident peak demand), electric vehicle kWh sales, and the number of expected customers, with weather normalization, including detailed supporting workpapers.
- e. The electric public utility's forecasting methodology used for each of its forecasts, including its forecasts for all costs, energy sales, peak demand, and number of expected customers for each year of the MYRP.
- f. A detailed description of and detailed workpapers supporting all adjustments increasing or decreasing, for each year of the MYRP, operating revenue deductions and capital expenditures above or below the amounts proposed for the general rate case in accordance with G.S. § 62-133.
- g. A calculation of the proposed percent increase in revenue requirements for Rate Years 2 and 3, if applicable, of the MYRP calculated as set forth in the Statute.
- h. A fully adjusted jurisdictional and class cost of service study that includes:
 - i. Total electric cost of service and rates of return on ratebase 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.
- i. The electric public utility's financing plan for the capital spending projects for each year of the MYRP.
- j. Projected costs, including AFUDC, if applicable, and related workpapers associated with the discrete and identifiable capital spending projects to be placed into service for each Rate Year of the MYRP, including:
 - i. The reason for each capital spending project;
 - ii. The scope of each capital spending project;
 - iii. The timing of each capital spending project, including projected in-service month and year for each capital spending project;
 - iv. The depreciation life of each capital spending project by year;
 - v. Changes expected in the depreciable life of each capital spending project for two years after the conclusion of the MYRP; and
 - vi. The impacts on (a) operating expenses (including operations and maintenance, depreciation, and taxes other than income expenses), and (b) the itemized rate base, related to the

- construction, and placement into service, of the capital spending projects for each Rate Year of the MYRP.
- k. 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.
 - l. A reconciliation, accompanied by detailed workpapers, of the capital expenditures and expenses associated with the capital spending projects set forth in response to subsection j. above with the increases in annual expenses and capital investments set forth in subsections b. and c. above.
 - m. A proposed Earnings Sharing Mechanism that provides for the refund to customers 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. The proposal must include the following:
 - i. The projected, weather-normalized earnings for each Rate Year.
 - ii. The electric public utility's weather normalization methodology, along with all underlying assumptions and calculations.
 - iii. Proposed revenue requirements for each Rate Year of the MYRP.
 - n. Proposed base rates and pro forma revenues for each of the years that a MYRP is in effect or a method for calculating the same, accompanied by exhibits that illustrate base rate changes (exclusive of all riders applicable to the electric public utility's service), and workpapers similar in form to those provided for the general rate case pursuant to G.S. § 62-133, with exhibits including the base revenues and associated rates for the NC retail jurisdiction, each customer class and rate schedule.
 - o. A proposed allocation of the electric public utility's total revenue requirement among customer classes for each Rate Year of the MYRP 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. Interclass subsidization of ratepayers should be minimized to the greatest extent practicable by the conclusion of the MYRP period.
 - p. A new depreciation study prepared within 180 days of the filing of the PBR application. However, an electric public utility serving fewer than 150,000 customers in North Carolina may file a new depreciation study that was prepared within two years of the PBR application date.
- (3) One or more clearly defined PIMs that include the following:
- a. Identification of the Policy Goal targeted by the PIM;
 - b. A detailed explanation of how the proposed PIM supports or advances the Policy Goal;
 - c. An estimate of the impact to annual and total revenue requirements

- (NC retail jurisdiction and customer classes) that would result from supporting or advancing the Policy Goal;
- d. Identifiable and measurable metrics that will be used to assess compliance, including but not limited to projections of costs to be incurred, along with information on how the electric public utility intends to evaluate, measure, and verify compliance or achievement, and the proposed resources (labor, contractors, materials, etc.) the electric public utility plans to use to support or advance the Policy Goal; and
 - e. The penalty to be refunded to or the reward to be collected from customers for the proposed PIM 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 (or its equivalent) 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 the electric public utility for achieving specific outcomes or penalize the electric public utility for not achieving specific outcomes.
 - iv. A detailed explanation of:
 - a) How the proposed penalty or reward will minimize any duplication of other rewards or penalties created by other ratemaking mechanisms authorized by statute or Commission rule; and
 - b) How the electric public utility will distinguish the achievements that are rewarded through the incentives earned by the utility related to its DSM/EE portfolio approved pursuant to Rules R8-68 and 8-69 from those that it proposes to be measured for purposes of any performance incentive pursuant to § 62-133.16.
- (4) The electric public utility may include in its PBR application proposed Tracking Metrics with or without targets or benchmarks to measure electric public utility achievement.
- (e) General Procedures. – The following general procedures apply to a proceeding to consider a PBR application:
- (1) Any PBR application approved by the Commission shall remain in effect for the Plan Period of not more than 36 months.
 - (2) The Commission, on its own motion or at the request of the Commission Staff, Public Staff, or any party of interest in the PBR application proceeding or related general rate case proceeding, may review the sufficiency of the PBR application under the procedures set forth in Rule R1-17(f).

- (3) The electric public utility shall provide notice of the PBR application to the same extent as provided in G.S. 62-134(a). The notice to customers shall include the proposed tariff rates for each Rate Year in the Plan Period.
 - (4) During the Plan Period, the Commission, with good cause and upon its own motion or petition by the Public Staff, may examine the reasonableness of an electric public utility's rates under a plan, conduct periodic reviews with opportunities for public hearings and comments from interested parties, and initiate a proceeding to adjust base rates or PIMs as necessary. This examination may be consolidated with the Annual Review process under subsection (g) of this Rule.
 - (5) An electric public utility may not file a general rate case application to be effective during the Plan Period of an approved PBR application unless the weather-normalized earnings fall below the authorized rate of return on equity. If an electric public utility files a rate case due to weather-normalized earnings falling below the authorized rate of return on equity, the rates in effect under the approved PBR at the time of that rate case filing remain in effect until further order of the Commission.
 - (6) The order approving or modifying a PBR application shall address the process for annual adjustments to the ESM Rider, Decoupling Rider, and PIM Rider. Any adjustment ordered by the Commission in the ESM Rider, Decoupling Rider, and PIM Rider shall be effective for a 12-month period.
 - (7) The rates in effect at the end of the final Rate Year of the approved PBR shall remain in effect, and the utility shall continue to file the reports required under subsection (h) of this Rule, until further order of the Commission. Unless otherwise provided by Commission Order, the ESM Rider, Decoupling Rider, and PIM Rider shall be reset to \$0 at the end of the Plan Period, after the 12-month period of recovery of the final year adjustment authorized by the Commission under subsection (g) of this Rule.
- (f) Rejection of a PBR Application. – In an order of the Commission rejecting a PBR application, the Commission shall establish the electric public utility's base rates under G.S. 62-133 and provide an explanation of any deficiency in the PBR application. The order shall provide a period for the electric public utility to provide notice of its intent to file a proposed cure of the deficiencies, and a time period for the utility to file the proposed cure. The period for the electric public utility to file its proposed cure of the deficiencies will be based on the magnitude of the deficiencies outlined in the order but shall not exceed 90 days.
- (g) Annual Review. – The Commission shall evaluate the Decoupling Rider, ESM Rider, and PIM Rider for each of the three Rate Years of the Plan Period. The Commission will establish the procedure for the annual review and issue an order setting forth the procedure based on requirements of this Rule. The Commission's order setting forth the procedure for the annual review will require the utility to provide notice of the Annual Review and will schedule a public hearing. The public hearing may be canceled if no significant protests are received.

- (1) Decoupling Rider. – Within 45 days of the end of each quarter of a Plan Period, the electric public utility shall file a status report outlining its calculation of its proposed adjustment to the Decoupling Rider. Within 60 days of the end of each Rate Year, the electric public utility shall file its proposed adjustment to the Decoupling Rider for the Rate Year. The Public Staff shall file its analysis of the electric public utility’s proposed adjustment to the Decoupling Rider for the Rate Year within 60 days of the utility’s filing. The quarterly status reports and annual proposed adjustments to the Decoupling Rider filed by the electric public utility must include the following:
 - a. The final applicable residential rate schedules and riders eligible to be affected by the decoupling.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. The calculation of the total deferred differences between the estimated and actual revenue per customer, and the proposed billing factors to collect or refund the deferred differences, along with detailed supporting workpapers.
 - f. 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) ESM Rider. – The Commission shall examine the earnings of the electric public utility at the end of each Rate Year, as adjusted for weather normalization and any other pro forma adjustments found reasonable and appropriate by the Commission in the PBR proceeding, to determine if the earnings exceeded the authorized rate of return on equity determined by the Commission in the proceeding establishing the PBR. If the adjusted earnings exceed the authorized rate of return on equity plus 50 basis points, the excess earnings above the authorized rate of return on equity plus 50 basis points shall be shared with customers in the ESM Rider. Any penalty or reward from a PIM approved in the PBR, and any incentives related to demand-side management and energy efficiency measures pursuant to G.S. 62-133.9(f) shall be excluded from the calculation used to determine

the ESM Rider. Within 60 days of the end of each Rate Year, the electric public utility shall file its proposed adjustment to the ESM Rider for the Rate Year. The Public Staff shall file its analysis of the electric public utility's proposed adjustment to the ESM Rider for the Rate Year within 60 days of the utility's filing.

- (3) PIM Rider. – The Commission shall evaluate the performance of the electric public utility with respect to a PIM approved in an approved PBR application. Any financial rewards shall be collected from customers and any penalties shall be distributed to customers through the PIM Rider. Within 60 days of the end of each Rate Year, the electric public utility shall file its calculations of all increment and decrement billing factors for the PIM Rider for the Rate Year. The electric public utility shall also file all workpapers and documentation verifying and supporting the results of the metrics used to quantify the results of any PIM. The Public Staff shall file its analysis of the electric public utility's calculations for the PIM Rider for the Rate Year within 60 days of the electric public utility's filing.

(h) Reporting Requirements. – An electric public utility with an approved PBR shall file quarterly reports for each three-month period of the Plan 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 contain the following:

- (1) An earnings report consisting of the following:
- a. A balance sheet as of the report date and an income statement for the three months and MYRP year-to-date for the electric public utility;
 - b. A statement of the per books net operating income for the three months and Rate Year-to-date for the electric public utility based on the most recent cost of service allocation study filed with the Commission, and on North Carolina ratemaking;
 - c. A statement of rate base at the end of the three months for the electric public utility based on the most recent cost of service allocation study filed with the Commission, and on North Carolina ratemaking;
 - d. The number of customers, kWh and kW sold, and service revenue for the three months for each rate division by rate type; and
 - e. A report of refunds or credits disbursed to customers during the three months by rate class by rate schedule.
- (2) A construction status report which includes the following information for each capital spending project:
- a. The costs incurred during the three months;
 - b. The cumulative amount incurred;
 - c. The original and revised estimated total cost;
 - d. The in-service date estimated in the MYRP; and
 - e. The actual date placed in service or, if not yet placed in service, the current estimated in-service date.

- (3) A report tracking the changes to any capital spending project, approved by the Commission for inclusion in the MYRP. The quarterly report shall include at a minimum, the following items:
- a. List of projects impacted by the change, including the project name as originally approved, any change in the scope of the project, and any other projects (new or original) that are impacted by the change.
 - b. For each project identified in subparagraph a. above, provide:
 1. The original and revised estimated in-service dates;
 2. A statement explaining the purpose/reason for the change;
 3. The original and revised cost estimates; and
 4. The actual spending in each quarter, year-to-date, and project-to-date.