

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 178

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

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

NOW COME the Carolina Industrial Group for Fair Utility Rates I, II, and III (CIGFUR), the Carolina Utility Customers Association, Inc. (CUCA), the North Carolina Sustainable Energy Association (NCSEA), the North Carolina Justice Center (NC Justice Center), North Carolina Housing Coalition (NC Housing Coalition), the Sierra Club, and the Southern Alliance for Clean Energy (together with the NC Justice Center, NC Housing Coalition, and Sierra Club, NCJC et al.) (collectively, Joint Intervenors), pursuant to the Commission's Order Granting, in Part, Motion for Leave issued December 30, 2021, and respectfully offer the following supplemental reply comments.

I. The Joint Proposed Rules Submitted by Joint Intervenors Were Procedurally and Substantively Proper.

Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC (DEP) (collectively, Duke or the Companies) argued in their Motion for Leave to File Supplemental Reply Comments (Motion) that Joint Intervenors' Reply Comments and Joint Proposed Rules were outside the scope of permissible reply comments.¹ Duke is incorrect. It was reasonable and appropriate for parties, including Joint Intervenors, to draw

¹ Duke's Motion, pp. 3-5.

from positions set forth in the initial comments of other parties, including the Public Staff, and to adjust their proposals and positions accordingly. Many of the modifications that Joint Intervenors made to the Public Staff's initial proposed rules were responsive to proposals advanced in Duke's initial comments that, if adopted, would have failed to provide interested parties and the Commission with sufficient information or adequate processes to vet performance-based regulation (PBR) applications filed by electric public utilities. The Joint Proposed Rules would further the policy goals of PBR in North Carolina, balance the competing interests of ratepayers and utilities, and foster greater transparency and fairness in the implementation of PBR in this state. The Joint Proposed Rules fall within the acceptable scope of reply comments and customary practice before the Commission.

Notably, Duke cites no Commission Rule or precedent in support of its argument that the Joint Proposed Rules were improper for inclusion in reply comments. When developing rules, the Commission is not acting in its quasi-judicial role but is instead acting in its administrative capacity. *See, e.g., Atl. Greyhound Corp. v. N. Carolina Utilities Comm'n*, 229 N.C. 31, 35, 47 S.E.2d 473, 476 (1948) ("The Utilities Commission is an administrative agency of the State with quasi-judicial powers"). It is a natural outgrowth of the comment process that reply comments build upon, rebut, or amplify points made by other parties in their respective initial comments. Allowing a party to refine and further develop their positions in reply comments, particularly after collaborating with other parties to reach consensus or compromise positions, is appropriate in a rule-making docket and aids the Commission in prioritizing or narrowing the range of contested issues. For this

reason, it would be inappropriate to restrict reply comments in this docket, especially given the short timeframe for initial comments on such complex and novel issues.

By the same token, it was reasonable for Joint Intervenors to identify common ground and work together on revised proposed rules based on the Public Staff's proposed rules filed with its Initial Comments and support many of the refinements to those proposed rules developed by the Public Staff in its reply comments, and about which the electric public utilities have expressed opposition. The Companies themselves suggested that such an approach would be appropriate in their motion seeking extra time to file reply comments. In Duke's Motion for Extension of Time filed on November 19, 2021, the Companies represented that they would use the extra requested time to search for common ground with parties in this docket:

[T]he Companies have noted areas of potential compromise with certain parties that filed comments and proposed rules in this docket and respectfully request additional time to collaborate with those parties to attempt to minimize the potential number of issues for the Commission to decide in this docket.²

Had the Companies followed through with this promised collaboration and pursued compromise with other parties, they likely would have agreed to certain revisions to the Companies' own proposed rules and likewise tendered revised rules with their reply comments. Instead of seeking such compromise, however, Duke doubled down on its initial proposed rules and objects to the parties that did pursue such collaboration and compromise. As such, Duke's objection appears to be mere posturing for the last word against the positions set forth by the Joint Intervenors, Public Staff, and the Attorney General's Office.

² Duke's Motion for Extension of Time to File Reply Comments, at 2 (Nov. 19, 2021).

Though Duke devoted much of its Motion to decrying what it asserts to be improper reply comments, Duke conveniently ignored that its own Reply Comments included extensive new argumentation and discussion, including a new report from Duke's third-party consultant, opining on legislative intent and the application of the PBR framework under North Carolina law.³ This report, argumentation, and discussion, under Duke's narrow theory of the range of acceptable issues for reply comments, should not have been included in its reply. This inconsistency exposes the lack of substance underpinning the arguments of the electric public utilities as set forth in Duke's Motion and the letter filed by DENC in support thereof.

II. The Commission Has the Authority to Implement Balanced PBR Rules.

The Commission has broad authority over the final contours of the PBR process. While G.S. 62-133.16 clearly prescribes certain aspects of the PBR process, the legislation also leaves important procedural and substantive questions unanswered, expressly directing the Commission to adopt rules to implement the specific details of the general PBR framework carved out in statute. Not only did the General Assembly instruct the Commission to resolve these questions, but Joint Intervenors contend that the General Assembly implicitly intended the Commission would resolve such questions in favor of containing costs and minimizing ratepayer impacts.

The General Assembly enacted G.S. 62-133.16 against the backdrop of the Commission's existing statutory authority to craft regulations in the public interest. *See Ridge Cmty. Invs., Inc. v. Berry*, 293 N.C. 688, 695, 239 S.E.2d 566, 570 (1977) (“[I]t is always presumed that the Legislature acted with full knowledge of prior and

³ *See, e.g.*, Duke's Reply Comments, at 13-23, and Ex. A at 1-7 (Dec. 17, 2021).

existing law.”). The Commission has long had the authority “to regulate public utilities *generally*” to accomplish the policies set forth in G.S. 62-2(a). G.S. § 62-2(b) (emphasis added). The first statutory duty delegated to the Commission by way of its general authority is to “provide *fair regulation* of public utilities *in the interest of the public.*” *Id.* § 62-2(a)(1) (emphasis added). Later in Chapter 62, the General Assembly reiterated the Commission’s broad rule-making power: “The Commission shall have and exercise *full power and authority . . . to make and enforce reasonable and necessary rules and regulations*” to administer the provision of Chapter 62. *Id.* § 62-31 (emphasis added). In other words, when the General Assembly enacted G.S. 62-133.16, it did so without disturbing the existing framework under which the Commission was created and empowered: to, first and foremost, enact fair regulations *for the public’s benefit.*

The Commission’s authority to craft regulations for the public’s benefit is buttressed by the Commission’s general authority to supervise public utilities. *See id.* § 62-30 (“The Commission shall have and exercise such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties.”). If the Commission has all powers necessary and incident to the supervision and control of public utilities, such powers certainly include the supervision and control of the PBR process to the extent not otherwise inconsistent with the statute or in instances when the statute is silent.

Consistent with the Commission’s rulemaking authority, in S.L. 2021-165 (House Bill 951) the General Assembly directed the Commission to adopt rules “to implement the requirements” of G.S. 62-133.16. *Id.* § 62-133.16(j). Thus, the

General Assembly delegated to the Commission the ultimate implementation of the statute—i.e., the ability to “fill in gaps” in the legislative prescription. In particular, the General Assembly directed the Commission to determine “[t]he *specific procedures and requirements* that an electric public utility shall meet when requesting approval of a PBR application.” *Id.* § 62-133.6(j)(1) (emphasis added). The Commission is also directed to establish the criteria for approving an application, the “parameters” for a technical conference, and the process for rejecting an application. *See id.* § 62-133.6(j)(2)–(4). In contrast to some legislative enactments that do not expressly contemplate rulemaking, the General Assembly explicitly directed the Commission to exercise its subject matter expertise and discretion to effectuate the regulatory scheme set out in G.S. 62-133.16 by, among other things, establishing “procedures,” “requirements,” and “parameters.”

In passing G.S. 62-133.16, the General Assembly dictated some specific elements of the PBR process. For example, the General Assembly provided certain definitions, required a PBR application to include three components, and restricted a PBR plan to “not more than 36 months.” *Id.* § 62-133.16(a), (c), (f). The Joint Proposed Rules do not alter such statutory requirements of the PBR process.

However, G.S. 62-133.16 leaves many specific procedures and requirements unaddressed. For example, the statute does not provide explicit guidance on the following key questions (among many others) about the PBR process:

- Can Policy Goals be established in a docket different than the PBR-application docket?
- Upon the expiration of the 36-month period of a multi-year rate plan (MYRP), does a utility return to the base rates last established under G.S. 62-133?
- Should utilities be required to stagger the filings of their PBR applications?

- Should the initial Carbon Plan be developed by the Commission before a utility is allowed to file a three-year PBR application (which ostensibly would contain a capital spending plan directly informed by the initial Carbon Plan)?

Section 62-133.16 does not expressly answer these questions. The resolution of these questions is left to the Commission’s discretion, seeking to apply and effectuate the General Assembly’s intent. Chapter 62 makes plain that the General Assembly intentionally created and empowered the Commission to enact rules to benefit the public interest, not the individual interests of the utility or its shareholders. *Id.* § 62-2(a)(1), (b). Then, in enacting G.S. 62-133.16, the General Assembly intentionally delegated the implementation of the PBR process to the Commission. *Id.* § 62-133.16(j). Thus, although the statute left key questions about its implementation to be resolved, there is *no question* that the General Assembly intended the Commission to resolve such questions in a manner that favors the interests of the public—i.e., ratepayers.

In its anticipated arguments against the Joint Proposed Rules, Duke is apparently trying to force the Commission into a statutory “straightjacket” by arguing, in essence, that the Commission must reject all of intervenors’ proposals because the Commission is powerless to determine how best to “fill in the gaps” of the legislation.⁴ North Carolina courts, however, have affirmed an agency’s power to resolve statutory ambiguities: “[I]f the legislature [is] silent or ambiguous on the specific issue, *then the agency has room to*

⁴ At the same time Duke advances this argument, it repeatedly violates the principle it argues for by advocating that the Commission adopt rules that are not backstopped by express statutory language. *See, e.g.*, Duke’s Reply Comments, p. 23 (arguing that Year 3 rates plus the ESM plus the Decoupling Ratemaking Mechanism survive the expiration of the MYRP, despite there being no language to this effect in that statute), p. 22 (arguing that deferred accounting should be granted if a MYRP rate plan is not approved in 300 days, despite there being no legislative language requiring such treatment), p. 23 (arguing that the Commission must provide a “detailed” explanation of any MYRP definition, while the governing statute only requires an “explanation”), p. 23 (arguing that the utility should be afforded 90 days to cure any plan deficiency, when no such time period is specified by statute).

construe the statute.” *Charlotte-Mecklenburg Hosp. Auth. v. N. Carolina Dep’t of Health & Hum. Servs.*, 201 N.C. App. 70, 73, 685 S.E.2d 562, 565 (2009) (emphasis added) (citations omitted). Indeed, when it has suited Duke’s interests, Duke itself has advocated for the Commission’s power to resolve matters not specifically prescribed by statute: “According to Duke, the Commission’s authority under Chapter 62 is broad and comprehensive, *particularly with respect to matters that are not limited by specific statutory prescriptions*[.]” Order Issuing Declaratory Ruling, Docket No. E-7, Sub 819 (March 20, 2007) (emphasis added).

In preparing the Joint Proposed Rules, the Joint Intervenors collaborated to identify important gaps left by the legislation, recognized the Commission’s authority and directive to fill such gaps, and proposed solutions to such statutory ambiguities that will best protect ratepayers, ensure transparency, and effectuate the General Assembly’s intent.

III. Good Reasons Exist to Adopt the Proposed Requirements Challenged by Duke.

a. Technical conference process [Motion, ¶ 15(a)]

In paragraph 15(a) of its Motion, Duke challenges the appropriateness of the technical conference process proposed by the Joint Intervenors. Specifically, Joint Intervenors proposed a process whereby all parties will have an opportunity to provide comment and feedback.

Joint Intervenors’ technical conference proposal⁵ is the product of compromise and attempts to balance G.S. 62-133.16(j)(3)’s requirement for a process where “the electric public utility presents information regarding projected transmission and distribution

⁵ Joint Intervenors’ Reply Comments, Appendix A, at 3-4.

expenditures” and the additional requirement that “interested parties [be] permitted to provide comment and feedback[.]” Moreover, Duke’s insinuation that a “two-phase” process is somehow impermissible is at odds with the plain language of G.S. 62-133.16(j)(3), which states that the process shall “consist[] of one or more public meetings[.]” While the Joint Intervenors’ proposal varies from the technical conference process originally proposed by the Public Staff, it complies with the requirements of the statute (that “interested parties [be] permitted to provide comment and feedback”) and represents a reasonable balance that allows both the electric public utility and interested parties to present information to the Commission and feedback to one another.

b. Forecasting data related to T&D investments, including by geography [Motion, ¶ 15(c)(i), (ii), and (iv)]

Joint Intervenors support the Public Staff’s proposed rule requiring the applicable electric public utility to include forecasting data related to transmission and distribution (T&D) investments, including as modified in Joint Intervenors’ reply comments with respect to requiring that such forecasts “should be sufficiently granular (i.e., at the substation or circuit level) to justify the electric public utility’s proposed load-related investments at specific geographic locations.”⁶ This information is relevant and material to factual issues, including overall project costs and cost-benefit analyses, as well as legal ones, such as issues of reasonableness of the proposed expenditures. Moreover, decisions related to geography, such as brownfield versus greenfield siting of new carbon-free generation projects, are inextricably intertwined with decisions related to specific T&D investments. To the extent that adequate T&D system infrastructure is needed to connect

⁶ Joint Intervenors’ Reply Comments, Appendix A, at 20.

an electric public utility's generation with customer load, total project costs may increase as buildout of new, or upgrade of existing, T&D assets is needed to move electrons from generating facility to end users. The Commission has recognized the importance of T&D upgrade costs, as well as their impact on ratepayers, in various dockets. The list of capital projects approved for cost recovery through an MYRP were contemplated by the General Assembly to be those which accomplish the carbon-reduction goals set forth in House Bill 951 in the least-cost way via the Carbon Plan, for which the Commission has the authority, discretion, and responsibility to implement and oversee. Comprehensive information regarding the utility's proposed list of capital projects and how they relate to the broader Carbon Plan and compare to alternative means to achieve the same end goal is absolutely appropriate and necessary for the Commission to cost-effectively implement House Bill 951.

Duke may wish to provide less, rather than more, forecasting data in a utility's PBR application. Joint Intervenors, however, contend that the legislative intent was to provide the *minimum* baseline for regulatory oversight, delegating to the Commission the authority and discretion to impose additional requirements not otherwise inconsistent with the statute during the implementation process by way of this rulemaking docket. G.S. 62-133.16(j)(1) directs the Commission to adopt rules that include "[t]he specific procedures and requirements that an electric public utility shall meet when requesting approval of a PBR application." This language delegates express authority and discretion to the Commission for deciding and implementing the granular details of the general PBR framework set forth in statute. Assuming, *arguendo*, that the Commission believed the PBR statute already contains significant restrictive ratepayer protections, this serves only as further support for

what Joint Intervenors contend to be the underlying legislative intent: an attempt to counterbalance some of the fundamental advantages to the utility against the respective risks to ratepayers that are inherent in any MYRP.

Joint Intervenors stress the importance of relying upon canons of statutory construction to interpret the PBR statute: to provide a basic framework for PBR that attempts to balance the relatively low risk to the utility that it may underearn against the relatively high risk to ratepayers that the utility may overearn, while delegating broad authority and discretion to the Commission to implement this basic framework at a more granular level. Because the playing field in an MYRP is so skewed in the utility's favor, the Commission has compelling reasons to protect ratepayers and to prevent the exacerbation of information asymmetry as between utility and regulator. The Commission should take every opportunity to implement the PBR provisions of House Bill 951 in a way that further levels the playing field as between the utility and everyone else by erring on the side of requiring more information rather than less.

c. Requiring a statement that inclusion of capital projects in a MYRP does not constitute prudence determination [Motion, ¶ 15(c)(iii)]

The issue of when and how a prudency review is undertaken with respect to capital investments under a MYRP is a critical issue that is not specifically addressed by G.S. 62-133.16 and appears to be a source of considerable confusion among the commenting parties, especially Duke.

The statute does not support the inclusion of costs into rate base before a prudency review. The PBR statute states that rates are to be set for the first rate year of a MYRP as prescribed by G.S. 62-133 “*plus* costs associated with a known and measurable set of capital investments, net of operating benefits, associated with a set of discrete and

identifiable capital spending projects to be placed in service during the first rate year.” N.C. Gen. Stat. § 62-133.16(c)(1)a (emphasis added). While the statute plainly contemplates that approved costs will be recovered at the same time they are placed in service, there is nothing in the statute that indicates that the assets are not still subject to a prudency review before they are ultimately placed into rate base in accordance with the rate making processes under G.S. 62-133. To this point, the use of the word “plus” to describe the additional capital costs to be recovered in year one rates makes plain the legislative understanding and intent that such costs are “additional” to, and not part of, base rates. Moreover, while G.S. 62-133.16 created MYRP, it also simultaneously and expressly preserved the Commission’s traditional ratemaking authority. N.C. Gen. Stat. § 62-133.16(g) (“Nothing in this section shall be construed to (i) limit or abrogate the existing rate-making authority of the Commission[.]”). There is simply no basis in the statutes, especially in light of G.S. 62-133.16(g), for including costs in base rates *before* they are placed into service and reviewed for prudence.

Joint Intervenors favor an approach that makes clear (a) that an initial decision to include costs in a MYRP does not constitute a prudency determination, and (b) that such a determination is reserved for the next general rate case. This approach is most consistent with the language of G.S. 62-133.16 and the Commission’s underlying ratemaking authority (which is unchanged). While MYRP investments are subject to review in the annual review process contemplated by G.S. 62-133.16(c)(1)c., there is nothing in the

statutory language that suggests that this review is a prudency review or that this review contemplates additions to rate base outside of a general rate case.⁷

Duke acknowledges that its investment decisions will continue “in all cases [to be] subject to *future* prudence review by the Commission.”⁸ Yet Duke’s proposed rules do not actually provide mechanisms for such a determination to occur and its argument appears to contend that the Commission’s initial decision to permit recovery under a MYRP is itself a prudency determination.⁹ To eliminate any such doubt—and consistent with Duke’s own admission that investment decisions are “in all cases [to be] subject to *future* prudence review by the Commission”—an affirmative statement should be included in a PBR application acknowledging that inclusion of a capital spending project by the Commission in an MYRP does not constitute a prudence determination.

d. Public Staff’s proposals regarding timeframe for filing, technical conference, depreciation study, “double-prudence review” [Motion, ¶ 15(f)]

Nearly all the specific rule provisions advocated for by the Public Staff and Joint Intervenors, and in turn opposed by Duke, are cost-containment and/or accountability measures. As North Carolina transitions to a different regulatory paradigm—one that Duke lobbied so vigorously for years to obtain—the Commission’s role to regulate in the public

⁷ This is an additional reason why Joint Intervenors contend that, under the express statutory language which limits a MYRP to three years, an additive to rates from a MYRP expires with the plan itself, leaving in place the initial base rates approved via G.S. 62-133.

⁸ Duke’s Reply Comments, p. 26 (emphasis added).

⁹ See, e.g., Duke’s Reply Comments, at p. 12 (arguing that Intervenors’ proposals would deny recovery for capital investments that “have been thoroughly reviewed and approved by the Commission and found to be reasonable and prudent.”) and pp. 24-30 (using an iteration of the word “prudent” ten times in attempting to rebut the Public Staff’s proposal for treatment of project changes, cancellations, or postpones, without ever specifying how the Commission will make such a determination of prudence).

interest and protect ratepayers remains critically important. Without these cost-containment and accountability measures, the balance of power as between the Commission and the electric public utilities that it regulates would be skewed heavily in favor of the utilities. So, too, would the balance of interests as between the utility and its ratepayers be skewed heavily in favor of the utilities in the absence of robust cost-containment and accountability measures like the ones advocated for by the Public Staff and Joint Intervenors. These are not trivial matters, contrary to Duke’s characterizations.

Joint Intervenors support the Public Staff’s recommendation that the PBR rule include a requirement that the utility file a depreciation study completed within 180 days of the filing of the PBR Application. As the Public Staff noted in its Reply Comments, this recommendation is important because current depreciation studies “are necessary to capture the changes in rate base” when the “utilities will make considerable capital investments and retire other assets early.”¹⁰ Moreover, 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. 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.

Joint Intervenors are concerned that Duke’s objection to what the utility deems to be a “double-prudence” review in favor of Duke’s proposal to delay the prudence review until the next rate case—when read together with the utility’s proposal to allow Rate Year

¹⁰ Public Staff’s Reply Comments, p. 8.

3 rates to continue in perpetuity upon the expiration of an MYRP—will result, practically speaking, in the utility avoiding a meaningful prudence review.

e. Annual Review Process [Motion, ¶ 15(d)]

The Joint Intervenors object to Duke’s characterization that the Joint Intervenors created a “completely revamped annual review process, which includes the filing of testimony and exhibits by the utility and intervenors[.]”¹¹ As noted above, it is entirely appropriate for comments made in reply to initial comments to include agreements, settlements, or any other sort of “meeting of the minds” between parties that result in new or adjusted positions. In this instance, the Joint Intervenors agreed with most of the substance of the rule proposed by the Public Staff in the Public Staff’s Initial Comments. In fact, the Joint Intervenors do not seek to change much of the substance of this portion of the Public Staff’s proposed rule with some clarifying requests as set forth in the Joint Proposed Rules.

Substantively, the biggest changes the Joint Intervenors suggested to the annual MYRP rate adjustment procedure section of the Public Staff’s proposed rule relates to the timing of testimony and exhibits on earnings in the annual review of the MYRP,¹² justification and explanation for any changes or substitutions in plans for MYRP projects,¹³

¹¹ Motion, p. 13.

¹² “[N]o later than 60 days following the conclusion of the rate year, the utility shall annually file testimony with exhibits and workpapers, with data provided to the parties in native format with formulae intact and working macros, that sets forth the utility’s earned return on equity for the prior MYRP Rate Year, with appropriate adjustments.” Joint Proposed Rule Appendix A at 16.

¹³ “Within 90 days of the end of the preceding MYRP rate year, the utility shall file the following: [i.] testimony and exhibits that provide a comparison of the estimated and actual costs and revenues during each year of the plan, as well as an explanation of the reasons for the variances, including full justification for all project substitutions or other material changes. Project details for

and a requirement that capital spending projects be included in the annual review.¹⁴ Duke's focus appears to be on the filing of "testimony and exhibits" when they claim that the Joint Intervenors have "completely revamped" the annual review process.¹⁵ The Joint Intervenors do *not* seek to belabor the annual review process.¹⁶ The Joint Intervenors believe 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. The Joint Intervenors' proposed changes to the rules mimic the tried-and-true rider proceeding process, with testimony and exhibits entered into the record. Along with the other safeguards in the modified proposed rule, this proposed process would allow utilities, intervenors, and the Commission to participate in proceedings that are generally familiar to participants and where the rules of evidence and burden are clearly delineated. Over multiple iterations, the Joint Intervenors suspect the MYRP annual review will become more streamlined and less contentious, like the evolution of the rider proceedings.

Notably, the utilities have the choice whether to file a MYRP rate case application, which triggers the annual review proceedings. No statute or rule requires the utilities file

all projects shall be provided, including the initial budget, the final cost, and the date each project was booked to plant in-service. In addition, for each project the electric public utility should provide all project documents including business cases, capital project expenditure applications, change order forms, project close out reports, and work orders[.]” Appendix A to Joint Intervenors Reply Comments, at R8-__(j)(2)(b).

¹⁴ “Capital Spending Projects shall be reviewed during the Annual Review and Reconciliation proceeding, including any project substitutions or other material changes made.” Appendix A to Joint Intervenors Reply Comments, at R8-__(j)(2)(d).

¹⁵ Motion, at 13.

¹⁶ The Joint Intervenors cannot help but note the irony that Duke utilizes a protracted commenting period, complete with a request for supplemental reply comments, in part to argue that the Joint Intervenors seek to make the annual review process less efficient or streamlined.

such applications. However, to the extent the utilities seek to complain about workload and the onerous nature of annual review of MYRP matters, then they can simply choose not to submit the MYRP application.

Further, the disparity in workforce and resources between the utilities and other stakeholders cannot be understated. The utilities can field a team of lawyers and experts in any given proceeding—including an annual MYRP proceeding—and then seek to recover those expenses from ratepayers. Neither the Commission, the Public Staff, nor any of the intervenors have the same resources, nor the lack of cost risk, but all these parties will either (1) be required to participate in each annual review proceeding or (2) make the calculated choice to participate in such annual review proceeding to seek the best possible outcome for their respective clients. The fact that stakeholders are asking for more meaningful annual review proceeding in the face of such a disparity of resources highlights the importance of these annual review proceedings to the public.

Conclusion

For the foregoing reasons, Duke's arguments regarding the proprietary of Joint Intervenors efforts to assist the Commission and advance the public interest by collaborating towards a unified set of rules are devoid of merit. Further, Joint Intervenors would respectfully urge the Commission to exercise its considerable discretion when implementing PBR in North Carolina to balance the interests of ratepayers and the utilities as reflected in the proposed Rules included in the Reply Comments of the Joint Intervenors.

Respectfully submitted this the 5th day of January, 2022.

/s/ Christina D. Cress

Christina D. Cress
N.C. State Bar No. 45963
BAILEY & DIXON, LLP
434 Fayetteville Street, Suite 2500
P.O. Box 1351 (zip 27602)
Raleigh, NC 27601
(919) 607-6055
ccress@bdixon.com

Attorneys for CIGFUR

/s/ Marcus W. Trathen

Marcus W. Trathen
N.C. State Bar No. 17621
Craig D. Schauer
N.C. State Bar No. 41571
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, LLP
Suite 1700, Wells Fargo Capitol Center
150 Fayetteville Street
P.O. Box 1800 (zip 27602)
Raleigh, NC 27601
(919) 839-0300
mtrathen@brookspierce.com
cschauer@brookspierce.com

Attorneys for CUCA

/s/ Peter H. Ledford

Peter H. Ledford
N.C. State Bar No. 42999
Benjamin W. Smith
N.C. State Bar No. 48344
NCSEA
4800 Six Forks Road, Ste. 300
Raleigh, NC 27609
(919) 832-7601
peter@energync.org
ben@energync.org

Attorneys for NCSEA

/s/ David L. Neal
David L. Neal
N.C. Bar No. 27992
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, NC 27516
Telephone: (919) 967-1450
dneal@selcnc.org

*Attorney for North Carolina Justice Center, the
North Carolina Housing Coalition, Sierra Club, and
Southern Alliance for Clean Energy*

CERTIFICATE OF SERVICE

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

This the 5th day of January, 2022.

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