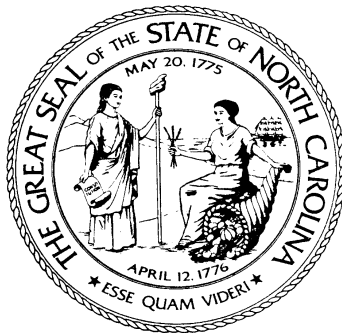


**REPORT ON ACTIVITIES TO IMPLEMENT  
PERFORMANCE-BASED REGULATION AS ENACTED  
BY S.L. 2021-165**

**DATE DUE: APRIL 1, 2023**

**SUBMITTED: MARCH 27, 2023**

**SUBMITTED TO  
THE GOVERNOR, THE ENVIRONMENTAL REVIEW  
COMMISSION, THE JOINT LEGISLATIVE  
COMMISSION ON ENERGY POLICY, THE JOINT  
LEGISLATIVE OVERSIGHT COMMITTEE ON  
AGRICULTURE AND NATURAL AND ECONOMIC  
RESOURCES, THE CHAIRS OF THE HOUSE AND  
SENATE APPROPRIATION COMMITTEES ON  
AGRICULTURE, NATURAL, AND ECONOMIC  
RESOURCES, AND THE CHAIRS OF THE HOUSE  
COMMITTEE ON ENERGY AND PUBLIC UTILITIES.**



**SUBMITTED BY  
THE NORTH CAROLINA UTILITIES COMMISSION**

## **I. BACKGROUND**

On October 13, 2021, the Governor signed into law House Bill 951 (S.L. 2021-165). Section 4 of S.L. 2021-165 enacts N.C. Gen. Stat. § 62-133.16 which authorizes performance-based regulation (PBR) for electric public utilities. The new statute requires the Commission to submit a report to certain entities on the activities of the Commission to implement, and the activities of the electric public utilities to comply with, the statute authorizing PBR. The report must also include a summary of public comments filed with the Commission. The report is to be submitted to the Governor, the Environmental Review Commission, the Joint Legislative Commission on Energy Policy, the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Chairs of the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, the Chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources, and the Chairs of the House Committee on Energy and Public Utilities.

## **II. COMMISSION IMPLEMENTATION AND UTILITY ACTIVITIES**

Pursuant to Section 4 of S.L. 2021-165, the Commission was required to adopt rules implementing PBR within 120 days of when the bill became law. The Commission conducted a rulemaking and issued its order adopting Rule R1-17B on February 10, 2022, within the statutory timeframe.

On April 1, 2022, the Commission submitted its first required report on implementation of PBR to the persons and entities that the statute requires. That report included an attached copy of the February 10, 2022 Order Adopting Commission Rule R1-17B. When the Commission submitted its first report, no electric public utility had filed a proposed PBR Application under the newly enacted statute.

## **III. PBR APPLICATION FILINGS**

To date, two electric public utilities, Duke Energy Progress (DEP) and Duke Energy Carolinas (DEC, and together with DEP, Duke) have filed applications for adjustments of rates and charges and for PBR.

### **Docket No. E-2, Sub 1300 (DEP Rate Case and PBR Application)**

On June 8, 2022, as required by the statute, DEP filed a Request to Initiate Technical Conference Regarding the Projected Transmission and Distribution Projects to be Included in a Performance-Based Regulation Application, Docket No. E-2, Sub 1300.

On June 15, 2022, the Commission issued an Order Scheduling Technical Conference and Setting Procedures for Technical Conference. In the order the Commission scheduled the Technical Conference for July 25, 2022.

On July 15, 2022, DEP filed a Transmission & Distribution Information Filing that included information on eleven distribution projects and seven transmission projects.

On July 25, 2022, the Commission held the Technical Conference in Commission Hearing Room 2115, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina.

On September 6, 2022, DEP filed a notice, pursuant to Commission Rule R1-17(a), that DEP intended to file, on or about October 6, 2022, a general rate application that would include a PBR Application as authorized by N.C.G.S. § 62-133.16.

On October 6, 2022, DEP filed its Application to Adjust Retail Base Rates and for Performance-Based Regulation, and Request for an Accounting Order in Docket No. E-2, Sub 1300.

On October 31, 2022, the Commission issued an Order Establishing General Rate Case and Suspending Rates.

On December 16, 2022, the Commission issued an Order Scheduling Investigation and Hearings, Establishing Intervention and Testimony Due Dates and Discovery Guidelines, and Requiring Public Notice.

On December 21, 2022, the Commission issued an Order Rescheduling Public Witness Hearings, Revising Public Notice, and Revising Requirement for Mailing Public Notice.

On March 6, 2023, the Commission conducted a public witness hearing at the Haywood County Courthouse in Waynesville, North Carolina.

On March 13, 2023, the Commission conducted a public witness hearing at the Person County Courthouse in Roxboro, North Carolina.

On March 14, 2023, the Commission conducted a public witness hearing in the Commission Hearing Room 2115, Dobbs Building, Raleigh, North Carolina.

On March 20, 2023, the Commission conducted a public witness hearing at the Greene County Courthouse in Snow Hill, North Carolina.

On March 21, 2023, the Commission conducted a public witness hearing at the Robeson County Courthouse in Lumberton, North Carolina.

The application is scheduled for an expert witness hearing beginning at 2:00 p.m. on Monday, May 1, 2023, and continuing as necessary until conclusion in Commission Hearing Room 2115, Second Floor, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina.

The following parties either petitioned to intervene before the Technical Conference, filed comments before the Technical Conference, or appeared at the Technical Conference: Carolina Industrial Group for Fair Utility Rates II (CIGFUR II); Carolina Utility Customers Association, Inc. (CUCA); the Attorney General's Office (AGO); the North Carolina Justice Center, North Carolina Housing Coalition, and the Southern Alliance for Clean Energy (NCJC, NCHC, and SACE); the North Carolina Sustainable Energy Association (NCSEA); the Natural Resources Defense Council (NRDC); Vote Solar; and the Public Staff – North Carolina Utilities Commission (Public Staff).

The following parties petitioned to intervene after DEP filed its Application and before March 21, 2023: The Kroger Co. and Harris Teeter, LLC, The Commercial Group, Fayetteville Public Works Commission, Sierra Club, and The United States Department of Defense and all other Federal Executive Agencies, Haywood Electric Membership Cooperative (Haywood EMC), Carolina Clean Energy Business Association (CCEBA), North Carolina League of Municipalities, and North Carolina Electric Membership Corporation (NCEMC).

**Docket No. E-7, Sub 1276 (DEC Rate Case and PBR Application)**

On September 8, 2022, as required by the statute, DEC filed a Request to Initiate Technical Conference Regarding the Projected Transmission and Distribution Projects to be Included in a Performance-Based Regulation Application, Docket No. E-7, Sub 1276.

On September 14, 2022, the Commission issued an Order Scheduling Technical Conference and Setting Procedures for Technical Conference. In the order, the Commission scheduled the Technical Conference for November 2, 2022.

On October 19, 2022, DEC filed a Transmission & Distribution Information Filing that included information on 42 distribution projects and 7 transmission projects.

On November 2, 2022, the Commission held the Technical Conference in Commission Hearing Room 2115, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina.

On December 7, 2022, DEC filed a notice, pursuant to Commission Rule R1-17(a), that DEC intended to file, on or about January 6, 2023, a general rate application that would include a PBR Application as authorized by N.C.G.S. § 62-133.16.

On January 19, 2023, DEC filed its Application to Adjust Retail Base Rates and for Performance-Based Regulation, and Request for an Accounting Order in Docket No. E-7, Sub 1276.

On February 16, 2023, the Commission issued an Order Establishing General Rate Case and Suspending Rates.

On March 16, 2023, the Commission issued an Order Scheduling Investigation and Hearings, Establishing Intervention and Testimony Due Dates and Discovery Guidelines, and Requiring Public Notice.

The following parties either petitioned to intervene before the Technical Conference, filed comments before the Technical Conference, or appeared at the Technical Conference: Carolina Industrial Group for Fair Utility Rates III (CIGFUR III); Blue Ridge Electric Membership Corporation (EMC); Haywood EMC; Piedmont EMC; CUCA; NCSEA; the Public Staff; NCJC, NCHC, SACE, and NRDC; Rutherford EMC; and AGO.

The following parties petitioned to intervene after DEC filed its application and before March 21, 2023: The Commercial Group; The Sierra Club; Vote Solar; The Kroger Co. and Harris Teeter LLC, and CCEBA.

#### **IV. PUBLIC COMMENT**

Pursuant to Section 4 of S.L. 2021-165, the Commission is directed to include in its Report any public comments it receives on the implementation of PBR, and to consult with the Department of Environmental Quality (DEQ) on the Report. The Commission has not received public comment on the implementation of PBR. However, in the rate cases that DEP and DEC have filed, both of which include applications for PBR, some members of the public have filed comments in the dockets, made comments at public hearings, or both. The Commission requested input from the DEQ on this report by letter, attached hereto as Appendix A. DEQ responded that it does not have information to add to the report at this time.

#### **V. CONCLUSION**

The Commission adopted rules implementing PBR for electric public utilities as enacted by Section 4 of S.L. 2021-165. To date, two electric public utilities, DEP and DEC, have filed proposed PBR applications under this newly enacted statute. The Commission looks forward to further refining and clarifying the PBR Application process as the dockets proceed. The Commission continues to consider the implications of PBR Applications and how they relate to and are informed by other matters before the Commission such as the ongoing development of the Carbon Plan. Since last year's report, the Commission, Duke, and other interested parties have taken critical steps to bring performance-based regulation of electric public utilities to North Carolina, but much more work remains to achieve the state's clean energy and emissions reductions goals.



**State of North Carolina  
Utilities Commission**

COMMISSIONERS

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Karen M. Kemerait

March 14, 2023

Secretary Elizabeth S. Biser  
N.C. Department of Environmental Quality  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Dear Secretary Biser:

On October 13, 2021, the North Carolina General Assembly enacted legislation that authorized performance-based regulation of electric public utilities, Session Law 2021-165 (House Bill 951). As part of the legislation, the General Assembly requires the Utilities Commission to submit an annual report no later than April 1 of each year on the activities the Commission has undertaken to implement and that the electric power suppliers have undertaken to comply with the performance-based regulation requirements. N.C. Gen. Stat. § 62-133.16(i) further requires the Commission to consult with the Department of Environmental Quality regarding this report.

As S.L. 2021-165 required, the Commission conducted a rulemaking proceeding to implement performance-based regulation of electric public utilities, and on February 10, 2022, the Commission issued an order adopting the pertinent rules. Since last year's annual report, both Duke Energy Progress, LLC, and Duke Energy Carolinas, LCC, have filed rate cases with the Commission that include applications for performance-based regulation. The attached draft report includes information about those two pending proceedings at the Commission, including information about public witness hearings in the DEP case specifically that have not taken place yet but will have taken place when the Commission submits the annual report on or before April 1. In order to respond to the General Assembly, I am requesting that the Department provide to the Commission any information related to performance-based regulation of electric public utilities it may have to include in the report. Your response by March 24, 2023, is appreciated so that the Commission may meet its deadline.

## APPENDIX A

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Mitchell'.

Charlotte A. Mitchell, Chair  
North Carolina Utilities Commission

cc: Sushma Masemore, Assistant Secretary for the Environment, DEQ  
Bill Lane, General Counsel, DEQ