REPORT ON ACTIVITIES TO IMPLEMENT PERFORMANCE-BASED REGULATION PURSUANT TO N.C. GEN. STAT. § 62-133.16

DATE DUE: APRIL 1, 2025

SUBMITTED: MARCH 31, 2025,

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 APPROPRIATIONS 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 enacted N.C. Gen. Stat. § 62-133.16, which authorizes performance-based regulation (PBR) for electric public utilities (PBR Statute). The PBR Statute requires the North Carolina Utilities Commission (NCUC or 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. More particularly, N.C.G.S. § 62-133.16(i) requires that:

> No later than April 1 of each year, the Commission shall submit a report on the activities taken by the Commission to implement, and by electric public utilities to comply with, the requirements of this section 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. The report shall include a summary of public comments received by the Commission. In developing the report, the Commission shall consult with the Department of Environmental Quality.

The Commission requested input from the Department of Environmental Quality (DEQ) on this report by letter, attached hereto as Appendix A. DEQ responded by letter on March 21, 2025. The letter from DEQ is attached hereto as Appendix B.

II. COMMISSION IMPLEMENTATION AND UTILITY ACTIVITIES

The PBR Statute authorizes the Commission to incorporate PBR in setting base rates for electric public utilities. *See* N.C.G.S. § 62-133.16(b). Consistent with N.C.G.S. § 62-133.16(a), PBR includes a residential decoupling mechanism (RDM), one or more performance incentive mechanisms (PIMs), and a multiyear rate plan (MYRP) including an earnings sharing mechanism (ESM). To implement the PBR Statute, the Commission adopted Commission Rule R1-17B on February 10, 2022. *See* Order Adopting Rule, *Rulemaking Proceeding to Implement Performance-Based Regulation of Electric Utilities*, No. E-100, Sub 178 (N.C.U.C. Feb. 10, 2022).

The PBR Statute also provides that, within 60 days of the conclusion of each rate year of a MYRP, the Commission must establish a proceeding to (1) examine the earnings of the electric public utility to determine whether the earnings exceeded the authorized rate of return on equity (ROE) consistent with the ESM and a refund is due to customers via an ESM Rider; (2) evaluate the utility's performance on approved PIMs and establish a PIM Rider to collect rewards or refund penalties; and (3) evaluate the RDM and refund or collect, as applicable, a corresponding amount from residential customers, through a RDM Rider. N.C.G.S. § 62-133.16(c)(1)(c).

Commission Rule R1-17B(g) requires that the Commission annually evaluate the RDM Rider, the ESM Rider, and the PIM Rider (collectively, PBR Riders) (PBR Annual Review) and provides that:

> 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.

On September 20, 2024, the North Carolina Utilities Commission – Public Staff (Public Staff)[1] filed a petition seeking amendment to Commission Rule R1-17B which proposed revisions to clarify documentation requirements and establish guidelines for updates to a MYRP. *See* Public Staff Petition to Amend Commission Rule R1-17B, *Rulemaking Proceeding to Implement Performance-Based Regulation of Electric Utilities*, No. E-100, Sub 178 (Sept. 20, 2024).

On September 25, 2024, the Commission issued an Order requesting comments on the Public Staff's proposed amendments to Commission Rule R8-17B and permitted the intervention by interested parties. Order Requesting Comments on Proposed Revisions to Commission Rule R1-17B, *Rulemaking Proceeding to Implement Performance-Based Regulation of Electric Utilities*, No. E-100, Sub 178 (N.C.U.C. Sept. 25, 2024).

Parties filed initial comments on the proposed changes to Commission Rule R8-17B on October 24, 2024, and reply comments on December 6, 2024. A decision regarding the proposed changes to Commission Rule R1-17B is pending with the Commission.

III. GENERAL RATE CASE AND PBR APPLICATIONS

To date, two electric public utilities, Duke Energy Progress, LLC (DEP), and Duke Energy Carolinas, LLC (DEC), have filed applications for adjustments of rates and charges and for PBR.[2]

A. Docket No. E-2, Sub 1300: DEP General Rate Case and PBR Application[3]

On October 6, 2022, DEP filed an application (Application), in Docket No. E-2, Sub 1300 (DEP PBR Rate Case), to adjust and increase its North Carolina retail electric base revenue by approximately $219 million, which represented an overall net increase in its retail revenues of approximately 5.7%, and for approval of PBR. Application to Adjust Retail Base Rates and for Performance-Based Regulation, and Request for an Accounting Order, *Application of Duke Energy*

[1] Pursuant to N.C.G.S. § 62-15, the Public Staff is tasked with representation of the using and consuming public.

[2] Dominion Energy North Carolina (DENC) also concluded a general rate case in 2025, but did not seek implementation of PBR in its application. NCUC Docket No. E-22, Sub 694 available at: https://starw1.ncuc.gov/NCUC/ViewFile.aspx?Id=94840242-eaed-46d6-b822-4441e7656e50.

[3] NCUC Docket No. E-2, Sub 1300 available at: https://starw1.ncuc.gov/NCUC/page/docket-docs/PSC/DocketDetails.aspx?DocketId=77ce190c-8450-4126-b635-e524e1467be2.

Progress, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina and Performance-Based Regulation, No. E-2, Sub 1300 (Oct. 6, 2022).

More specifically, DEP sought Commission approval of a series of rate increases based on its proposed three-year MYRP with base rate increases for two successive years following the initial base rate increase. As proposed, DEP's MYRP would have resulted in a Rate Year 1 increase of approximately $14.72 per month for a typical residential customer using 1,000 kilowatt hours (kWh). Further, as proposed, additional increases for a typical residential consumer would be approximately $5.62 per month in Rate Year 2 and approximately $5.21 per month in Rate Year 3.

DEP's proposed MYRP period was the three-year (36-month) period beginning on October 1, 2023, and ending on September 30, 2026. More specifically, Rate Year 1 is the period beginning on October 1, 2023, and concluding on September 30, 2024; Rate Year 2 is the period beginning on October 1, 2024, and concluding on September 30, 2025; and Rate Year 3 is the period beginning on October 1, 2025, concluding on September 30, 2026. In addition to the previously mentioned proposed $219 million increase in its retail electric base revenue, DEP's proposed MYRP would increase DEP's revenue requirement by an additional $106.6 million in Rate Year 1, $150.8 million in Rate Year 2, and $138.3 million in Rate Year 3.

DEP's PBR Rate Case application also requested Commission approval of three riders: (1) an RDM, (2) an ESM, and (3) PIMs. DEP's proposed RDM Rider was intended to break the link between DEP's profits and usage per customer in the residential class. As proposed, the annual RDM Rider would reflect the difference between actual revenue and the target revenue for the residential class, subject to some adjustments, primarily for demand-side management, energy efficiency, and electric vehicle sales. As proposed, DEP's ESM Rider would share earnings with customers if DEP's adjusted earnings exceed a certain level. Also, as proposed for DEP's ESM Rider, if DEP's adjusted earnings exceed the authorized ROE determined in the proceeding plus 50 basis points, the excess earnings above the ROE plus 50 basis points will be distributed to customers in the annual ESM Rider. DEP also proposed a set of PIMs (Peak Load Reduction, Low-Income/Affordability, Reliability, and Renewables Integration and Encouragement) and three proposed tracking metrics (customer service, CO2 emissions, and beneficial electrification from electric vehicles) designed to align utility incentives with customer needs and state energy policy objectives of decarbonization, reliability, and affordability. DEP's proposed annual PIM Rider was designed to distribute or collect penalties and rewards based on DEP's performance with respect to the Commission-approved PIMs during each of the Rate Years.

The Commission scheduled public witness hearings on DEP's PBR Rate Case Application in Waynesville, Roxboro, Raleigh, Snow Hill, and Lumberton, North Carolina, on March 6, March 13, March 14, March 20, and March 21, 2023, respectively, as well as a virtual public witness hearing on April 20, 2023.

In summary, public witnesses stated their opposition to DEP's proposed rate increase. Many witnesses testified that they were on fixed incomes and referenced the poverty in some of the counties served by DEP. Moreover, some public witnesses testified to their concern regarding DEP's use of fossil fuels, including coal and natural gas power plants, fracking, and DEP not adequately increasing the use of clean energy and renewables. Finally, some public witnesses voiced their belief that DEP's executive compensation and shareholder dividends are excessive.

In addition to the public witness testimony, the Commission received a number of consumer statements of position, all of which were filed in Docket No. E-2, Sub 1300CS.

Following a nine-day expert witness hearing in which the Commission heard testimony from expert witnesses sponsored by parties representing a variety interests, including the utility, various consumer advocates (including, but not limited to, the Public Staff, the North Carolina Attorney General's Office, the Carolina Industrial Group for Fair Utility Rates II, the Carolina Utility Customers Association, Inc., the North Carolina League of Municipalities, and the North Carolina Justice Center), sustainable energy and environmental advocates (including, but not limited to, the North Carolina Sustainable Energy Association, the Southern Alliance for Clean Energy, the Natural Resources Defense Council, and the Carolinas Clean Energy Business Association), on August 18, 2023, the Commission issued an order granting a partial general rate increase, authorizing a MYRP for DEP that provides for annual base rate increases over a three-year period (effective October 1 of 2023, 2024, and 2025) to reflect costs and savings associated with discrete and identifiable capital investments projected to be used and useful during the course of the three-year period, and approving PBR Riders, including a RDM, an ESM, and PIMs (DEP PBR Rate Case Order). Order Accepting Stipulations, Granting Partial Rate Increase, and Requiring Public Notice, *Application of Duke Energy Progress, LLC, for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and Performance-Based Regulation*, No. E-2, Sub 1300 (N.C.U.C. Aug. 18, 2023). The Commission approved the following PIMs: a Time Differentiated and Dynamic Rate Enrollment PIM, a Reliability PIM, and a Renewables Integration and Encouragement PIM. The Commission also approved three tracking metrics for the PIMs (customer service, beneficial electrification from incremental load of EVs, and analyzing and reporting the 10 worst performing circuits).

The increase approved by the Commission is the increase from rates that were in effect as of the end of the test period for the rate case (December 31, 2021), updated for certain known changes in revenue, expenses, and rate base through March 31, 2023. The Commission approved an increase in base rate service revenues of: $245.7 million in Rate Year 1 (including the traditional general rate case increase of $148.2 million and $97.6 million for MYRP projects in Year 1, effective October 1, 2023, through September 30, 2024); $368.6 million (an incremental change of $122.9 million to Rate Year 1) in Rate Year 2, effective October 1, 2024, through September 30, 2025; and $503.8 million (an incremental change of $135.2 million to Rate Year 2) in Rate Year 3, effective October 1, 2025, through such time as new rates are approved by the Commission. For a typical residential customer using 1,000 kWh of electricity, the impact of these rate increases on a monthly basis are: (1) $13.95 in Rate Year 1; (2) $4.67 in Rate Year 2; and (3) $5.15 in Rate Year 3.

In arriving at the final decision, the Commission considered the testimony and evidence of all parties, the public witness testimony, and the consumer statements of position.

Certain intervenors (the Carolina Industrial Group for Fair Utility Rates II, Haywood Electric Membership Cooperative, and the North Carolina Attorney General's Office) appealed specific portions of the DEP PBR Rate Case Order to the North Carolina Supreme Court. Oral arguments occurred on February 13, 2025, and a decision of the Supreme Court is pending.[4]

B. Docket No. E-7, Sub 1276: DEC General Rate Case and PBR Application[5]

On January 19, 2023, DEC filed an application (Application), in Docket No. E-7, Sub 1276 (DEC PBR Rate Case), to adjust and increase its North Carolina retail electric base revenue by approximately $361.1 million, which represented an overall net increase in its retail revenues of approximately 6.9% and for approval of PBR. Application to Adjust Retail Base Rates and for Performance-Based Regulation, and Request for an Accounting Order, *Application of Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina and Performance Based Regulation*, No. E-7, Sub 1276 (Jan. 19, 2023).

More specifically, DEC sought Commission approval of a series of rate increases based on its proposed three-year MYRP with base rate increases for two successive years following the initial base rate increase. As proposed, DEC's MYRP would have resulted in a Rate Year 1 increase of approximately $12.54 per month for a typical residential customer using 1,000 kWh. Further, as proposed, additional increases for a typical residential consumer would be approximately $3.90 per month in Rate Year 2 and approximately $3.18 per month in Rate Year 3.

DEC's proposed MYRP period was the three-year (36-month) period beginning on January 1, 2024, and ending on December 31, 2026, with Rate Year 1 being the period beginning on January 1, 2024, and concluding on December 31, 2024; Rate Year 2 being the period beginning on January 1, 2025, and concluding on December 31, 2025; and Rate Year 3 being the period beginning on January 1, 2026, concluding on December 31, 2026. In addition to the previously mentioned proposed $361.1 million increase in its retail electric base revenue, DEC's proposed MYRP increased the revenue requirement an additional $139.8 million in Rate Year 1, $171.5 million in Rate Year 2, and $150.3 million in Rate Year 3.

DEC's PBR Rate Case application also requested Commission approval of three riders: (1) an RDM, (2) an ESM, and (3) PIMs. DEC's proposed RDM Rider was intended to break the link between DEC's profits and usage per customer in the residential class. As proposed, the annual RDM Rider would reflect the difference between actual revenue and the target revenue for the residential class. As proposed, DEC's ESM Rider would share earnings with customers if DEC's adjusted earnings exceed a certain level. Also, as proposed for DEC's ESM Rider, if DEC's adjusted earnings exceed the authorized ROE determined in the proceeding plus 50 basis points, the excess earnings above the ROE plus 50 basis points will be distributed to customers in the annual ESM Rider. DEC also proposed a set of PIMs (Peak Load Reduction, Low-Income/Affordability, Reliability, and Renewables Integration and Encouragement) and three proposed tracking metrics (customer service, CO2 emissions, and beneficial electrification from electric vehicles) designed to align utility incentives with customer needs and state energy policy objectives of decarbonization, reliability, and

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[4] *State ex rel. NC Utilities Commission, et al. v. CIGFUR III, et al.*, N.C. Supreme Court Case No. 75A24.

[5] NCUC Docket No. E-7, Sub 1276 available at: https://starw1.ncuc.gov/NCUC/page/docket-docs/PSC/DocketDetails.aspx?DocketId=8ac2009b-c7dd-4221-ab73-5d87068dd550.

affordability. DEC's proposed annual PIM Rider was designed to distribute or collect penalties and rewards based on DEC's performance with respect to the Commission-approved PIMs during each of the Rate Years.

The Commission scheduled public witness hearings on DEC's PBR Rate Case Application in Morganton, Charlotte, Winston-Salem, and Durham, North Carolina, on June 21, June 22, July 24, and August 14, 2023, respectively, as well as virtual public witness hearings on July 26 and July 31, 2023.

In summary, most public witnesses did not support DEC's proposed rate increase, but some public witnesses commended DEC's economic development efforts. More specifically, some public witnesses expressed concerns regarding the impact of the rate increase on those living on fixed incomes or experiencing poverty in the current economic environment. Some public witnesses also testified regarding DEC's use of fossil fuels, including coal and natural gas power plants, and argued in support of increased renewable generation resources. Some public witnesses also voiced concerns regarding DEC's executive compensation. The Charlotte Regional Business Alliance testified that DEC's investments to provide reliable and affordable energy, and build utility infrastructure for businesses is nationally regarded, and that DEC has partnered with various universities, including Historically Black Colleges and Universities, to intentionally develop a more diverse workforce and advance more diverse talent into strong leadership.

In addition to the public witness testimony, the Commission received a number of consumer statements of position, which were filed in Docket No. E-7, Sub 1276CS.

Following a six-day expert witness hearing in which the Commission heard testimony from expert witnesses sponsored by parties representing a variety interests, including the utility, various consumer advocates (including, but not limited to, the Public Staff, the North Carolina Attorney General's Office, the Carolina Industrial Group for Fair Utility Rates III, the Carolina Utility Customers Association, Inc., the North Carolina League of Municipalities, and the North Carolina Justice Center), sustainable energy and environmental advocates (including, but not limited to, the North Carolina Sustainable Energy Association, the Southern Alliance for Clean Energy, the Natural Resources Defense Council, and the Carolinas Clean Energy Business Association), on December 15, 2023, the Commission issued an order granting a partial general rate increase, authorizing a MYRP for DEC that provides for annual base rate increases over a three-year period (effective January 1 of 2024, 2025, and 2026) to reflect costs and savings associated with discrete and identifiable capital investments projected to be used and useful during the course of the three-year period, and approving PBR Riders, including a RDM, an ESM, and PIMs (DEC PBR Rate Case Order). Order Accepting Stipulations, Granting Partial Rate Increase, Requiring Public Notice, and Modifying Lincoln CT CPCN Conditions, *Application of Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and Performance-Based Regulation*, No. E-7, Sub 1276 (N.C.U.C. Dec. 15, 2023). As in the DEP proceeding, the PIMs that the Commission approved included a Time Differentiated and Dynamic Rate Enrollment PIM, a Reliability PIM, and a Renewables Integration and Encouragement PIM. The Commission also approved three tracking metrics for the PIMs (customer service, beneficial electrification from incremental load of EVs, and analyzing and reporting the 10 worst performing circuits).

The increase approved by the Commission is the increase from rates that were in effect as of the end of the test period for the rate case (December 31, 2021), updated for certain known changes in revenue, expenses, and rate base through June 30, 2023. The Commission approved an increase in base rate service revenues of $446.7 million in Rate Year 1 (including the traditional general rate case increase of $324.0 million and $122.7 million for MYRP projects in Year 1, effective January 1, 2024, through December 31, 2024); $620.1 million (an incremental change of $173.4 million to Rate Year 1) in Rate Year 2, effective January 1, 2025, through December 31, 2025; and $778.7 million (an incremental change of $158.62 million to Rate Year 2) in Rate Year 3, effective January 1, 2026, through such time as new rates are approved by the Commission. For a typical residential customer using 1,000 kWh of electricity, the impact of these rate increases on a monthly basis are: (1) $11.22 in Rate Year 1; (2) $4.19 in Rate Year 2; and (3) $4.10 in Rate Year 3.

In arriving at the final decision, the Commission considered the public witness testimony and consumer statements of position.

Intervenors including the Carolina Industrial Group for Fair Utility Rates III, Blue Ridge Electric Membership Corporation, Haywood Electric Membership Corporation, Piedmont Electric Membership Corporation, Rutherford Electric Membership Corporation, the North Carolina Attorney General's Office, and the Carolina Utility Customers Association, Inc., appealed specific portions of the DEC PBR Rate Case Order to the North Carolina Supreme Court. Oral arguments occurred on February 13, 2025, and a decision of the Court is pending.[6]

IV. PBR ANNUAL REVIEWS

A. Docket No. E-2, Sub 1361: DEP Annual Adjustment of PBR Riders[7]

Subsection (c) of the PBR Statute (N.C.G.S. § 62-133.16(c)) and Commission Rule R1-17B require the Commission to evaluate, after each rate year in a MYRP, the PBR Riders under which the utility will recover its costs and refund its customers if appropriate.

On December 2, 2024, in Docket No. E-2, Sub 1361, DEP filed an application initiating its PBR Annual Review and seeking the Commission's approval to adjust the RDM Rider, ESM Rider, and PIM Rider to reflect the outcomes of Rate Year 1, which was the period beginning on October 1, 2023, and ending on September 30, 2024 (PBR Rider Application). DEP's PBR Rider Application also states that the billing period for the PBR Riders will be April 1, 2025, through March 31, 2026.

With regard to its RDM Rider, DEP stated that it is under-recovered with respect to the residential targeted revenue per customer and, accordingly, recommended adjusting the RDM Rider to collect the under-recovery. DEP requested a RDM Rider rate of 0.2324 cents per kWh.

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[6] *State ex rel. NC Utilities Commission, et al. v. CIGFUR III, et al.*, N.C. Supreme Court Case No. 139A24 (consolidated with DEP rate case appeal, No. 75A24).

[7] *Available at* https://starw1.ncuc.gov/NCUC/page/docket-docs/PSC/DocketDetails.aspx?DocketId=e9ef396c-8438-44b2-a6f2-bdaf190c7d31.

Regarding its ESM Rider, DEP stated that its earned ROE, after consideration of the adjustments approved in the PBR Order, is 10.05%, which is within 50 basis points of the of the authorized ROE. As such, DEP stated that no refund is due to customers and the appropriate ESM Rider rate is $0.

Finally, with regard to its PIM Rider, DEP stated that its performance in Rate Year 1 under the approved PIMs entitles it to recover an amount of $711,765 from customers through the PIM Rider. More particularly, DEP stated that it earned a reward under the Time Differentiated and Dynamic Rate Enrollment PIM and Metric B of the Renewables Integration and Encouragement PIM. Accordingly, DEP requested approval of a PIM Rider rate of 0.002 cents per kWh.

The Commission scheduled a public witness hearing for February 10, 2025. However, pursuant to Commission Rule R1-17B(g), no significant protests were received by February 3, 2025, and, accordingly, the Commission cancelled the hearing.

On March 12, 2025, the Commission issued an Order Approving Residential Decoupling Mechanism Rider, Earnings Sharing Mechanism Rider, and Performance Incentive Mechanisms Rider. In that Order, the Commission approved: (1) the April 1, 2025 through March 31, 2026 billing period; (2) the RDM Rider as proposed by DEP allowing DEP to recover $39,390,682 at a rate of 0.2324 cents per kWh; (3) the ESM Rider as proposed by DEP with a rate of $0.00; and (4) a PIM Rider rate of 0.002 cents per kWh as proposed by DEP, allowing DEP to recover $711,765 as a reward under two different PIMs. A typical DEP residential customer using 1,000 kWh of electricity monthly will be charged approximately $2.34 per month under the PBR Riders. The Order is attached hereto as Appendix C.

B. Docket No. E-7, Sub 1326: DEC Annual Adjustment of PBR Riders[8]

On March 3, 2025, in Docket No. E-7, Sub 1326, DEC filed an application initiating its PBR Annual Review and seeking the Commission's approval to adjust the RDM Rider, ESM Rider, and PIM Rider to reflect the outcomes of Rate Year 1, which was the period beginning on January 15, 2024, and ending on December 31, 2024 (PBR Rider Application). DEC's PBR Rider Application also states that the billing period for the PBR Riders will be July 1, 2025, through June 30, 2026.

With regard to its RDM Rider, DEC stated that it is under-recovered with respect to the residential targeted revenue per customer and, accordingly, recommended adjusting the RDM Rider to collect the under-recovery. DEC requested a RDM Rider rate of 0.2477 cents per kWh.

Regarding its ESM Rider, DEC stated that its earned ROE, after consideration of the adjustments approved in PBR Order, is 9.79%, which is within 50 basis points of the of the authorized ROE. As such, DEC stated that no refund is due to customers and the appropriate ESM Rider rate is $0.

Finally, with regard to its PIM Rider, DEC stated that its performance in Rate Year 1 under the approved PIMs entitles it to recover an amount of $61,490 from customers through the PIM

[8] *Available at* https://starw1.ncuc.gov/NCUC/page/docket-docs/PSC/DocketDetails.aspx?DocketId=e9ef396c-8438-44b2-a6f2-bdaf190c7d31.

Rider. More particularly, DEC stated that it earned a reward under the Time Differentiated and Dynamic Rate Enrollment PIM. Accordingly, DEC requested approval of a PIM Rider rate of 0.0001 cents per kWh.

The Commission issued an Order Scheduling Hearing, Establishing Procedural and Filing Requirements, and Requiring Public Notice on March 21, 2025. That Order scheduled a public witness hearing for May 12, 2025. However, pursuant to Commission Rule R1-17B(g), if no significant protests are received by May 5, 2025, the Commission may determine that cancelation of the hearing is appropriate.

V. CONCLUSION

To date, two electric public utilities, DEP and DEC, have filed proposed PBR applications and have had their PBR applications and rate increases approved in part by the Commission, subject to certain modifications and conditions. The Commission looks forward to further refining and clarifying the PBR application process as it receives and considers future PBR applications. 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 and the Carbon Plan/Integrated Resource Plan combined proceeding (CPIRP).

APPENDIX A

State of North Carolina
Utilities Commission

March 6, 2025

Secretary D. Reid Wilson
N.C. Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

Dear Secretary Wilson:

On October 13, 2021, the North Carolina General Assembly enacted legislation that authorized performance-based regulation (PBR) 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. After issuance of that order, both Duke Energy Progress, LLC, and Duke Energy Carolinas, LCC filed rate cases with the Commission that included applications for performance-based regulation. The attached draft report includes information regarding the outcomes and current statuses of those two proceedings, in both of which the Commission has issued orders granting partial rate increases and allowing performance-based regulation subject to certain conditions. Portions of those orders have been appealed to the North Carolina Supreme Court. Oral arguments have taken place and a decision is pending. Further, Duke Energy Progress has filed its required performance-based regulation Annual Review and Rider Application. A decision from the Commission is pending in that proceeding, Docket No. E-2, Sub 1361.

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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 20, 2025, is appreciated so that the Commission may meet its deadline.

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

Sincerely,

Karen M. Kemerait

Karen M. Kemerait, Chair
North Carolina Utilities Commission

cc: Sushma Masemore, Assistant Secretary for the Environment, DEQ
Dan Hirschman, General Counsel, DEQ

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JOSH STEIN
Governor

D. REID WILSON
Secretary

PETER LEDFORD
Deputy Secretary for Policy

NORTH CAROLINA
Environmental Quality

March 21, 2025

Karen Kemerait, Chair
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4300

Re: North Carolina Department of Environmental Quality's Comments on Draft North Carolina Utilities Commission Report on Performance-Based Regulation

Dear Chair Kemerait,

Thank you for providing the Department of Environmental Quality ("DEQ") with the opportunity to review and comment on the North Carolina Utilities Commission's ("NCUC") forthcoming report ("Report") to the General Assembly on the implementation of performance-based regulation ("PBR").

DEQ has previously recommended that these Reports include additional information on specific performance incentive mechanisms ("PIMs")[1] and metrics approved by the NCUC, and DEQ reiterates this recommendation. The Report provides a clear and detailed overview of Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC's ("DEP") PBR rate cases as well as the financial impacts of the PBR riders but does not provide information about DEC and DEP's performance towards their PIMs. DEQ recommends that the Report, and the NCUC's website, include a "dashboard" that allows members of the public to track DEC and DEP's respective performance towards their PIMs.

Thank you for the opportunity to review the forthcoming Report and please let us know if we can provide any clarification on these comments.

Sincerely,

Peter Ledford
Deputy Secretary for Policy
North Carolina Department of Environmental Quality

cc: Dan Hirschman, DEQ General Counsel
Sushma Masemore, DEQ Deputy Secretary for Environment
Emma Hennen, DEQ Director of Legislative Affairs

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[1] *See*, Appendix B to the NCUC's 2024 report, *available at* https://www.ncuc.gov/reports/2024performancereg.pdf.

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1361

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Energy Progress, LLC,	)	ORDER APPROVING RESIDENTIAL
for Annual Adjustment of Performance-Based	)	DECOUPLING MECHANISM RIDER,
Regulation Riders Pursuant to N.C.G.S.	)	EARNINGS SHARING MECHANISM
§ 62-133.16(c) and Commission Rule R1-17B	)	RIDER, AND PERFORMANCE
	)	INCENTIVE MECHANISMS RIDER

BY THE COMMISSION: Section 62-133.16 of the North Carolina General Statutes authorizes the Commission to incorporate performance-based regulation (PBR) in setting base rates for electric public utilities (PBR Statute). Consistent with N.C. Gen. Stat. § 62-133.16(a), PBR includes a residential decoupling mechanism (RDM), one or more performance incentive mechanisms (PIMs), and a multiyear rate plan (MYRP) including an earnings sharing mechanism (ESM). To implement the PBR Statute, the Commission adopted Commission Rule R1-17B on February 10, 2022 (PBR Rule). *See* Order Adopting Commission Rule R1-17B, *Rulemaking Proceeding to Implement Performance-Based Regulation of Electric Utilities*, No. E-100, Sub 178 (N.C.U.C. Feb. 10, 2022).

In Docket No. E-2, Sub 1300 (DEP PBR Rate Case), acting on the application of Duke Energy Progress, LLC (DEP), the Commission authorized a MYRP for DEP including a RDM, an ESM, and PIMs in August of 2023. *See* Order Accepting Stipulation, Granting Partial Rate Increase, and Requiring Public Notice, *Application of Duke Energy Progress, LLC, for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and Performance-Based Regulation*, No. E-2, Sub 1300 (N.C.U.C. Aug. 18, 2023) (DEP PBR Rate Case Order). Further, on September 21, 2023, the Commission authorized DEP to implement its new rates for service rendered on and after October 1, 2023. *See* Order Approving Revenue Requirement, Rate Schedules and Notice to Customers of Change in Rates, *Application of Duke Energy Progress, LLC, for Adjustment of Rates and Charges Applicable to Electric Service in North Carolina and Performance-Based Regulation*, No. E-2, Sub 1300 (N.C.U.C. Sep. 21, 2023).

The PBR Statute provides that, within 60 days of the conclusion of each rate year of a MYRP, the Commission must establish a proceeding to: (1) examine the earnings of the electric public utility to determine whether the earnings exceeded the authorized rate of return on equity (ROE) consistent with the ESM and a refund is due to customers via an ESM Rider; (2) evaluate the utility’s performance on approved PIMs and establish a PIM Rider to collect rewards or refund penalties; and (3) evaluate the RDM and refund or collect, as applicable, a corresponding amount from residential customers, through a RDM Rider. N.C.G.S. § 62-133.16(c)(1)(c).

The PBR Rules require that the Commission annually evaluate the RDM Rider, the ESM Rider, and the PIM Rider (collectively, PBR Riders) (PBR Annual Review) and provides that:

> 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.

Commission Rule R1-17B(g). For each PBR Rider, the PBR Rule requires that the Public Staff shall file its analysis of the proposed rider adjustments within 60 days of the utility's filing. *See* Commission Rule R1-17B(g).

On December 2, 2024, DEP filed an application in this docket initiating the PBR Annual Review and seeking the Commission's approval to adjust the RDM Rider, ESM Rider, and PIM Rider to reflect the outcomes the period beginning on October 1, 2023, and ending on September 30, 2024 (Rate Year 1) (PBR Rider Application or Application). PBR Rider App. ¶ 4. DEP's PBR Rider Application also states that the billing period for the PBR Riders will be April 1, 2025, through March 31, 2026. *Id*. at ¶ 6.

On December 5, 2024, the Commission issued an Order Scheduling Hearing, Establishing Procedural and Filing Requirements, and Requiring Public Notice (Scheduling Order). The Scheduling Order noticed a public witness hearing for February 10, 2025, which, pursuant to Commission Rule R1-17B(g), was subject to cancellation if no significant protests were received by February 3, 2025, and directed DEP to publish a Public Notice prior to the public witness hearing and post the Public Notice prominently on the Duke Energy website. The Scheduling Order further established discovery guidelines and set deadlines for intervention and comments.

On December 23, 2024, the Carolina Industrial Group for Fair Utility Rates II (CIGFUR) filed a Petition to Intervene in this proceeding, which was granted by order dated January 29, 2025.

On January 27, 2025, the Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene in this proceeding, which was granted by order dated January 29, 2025.

On January 31, 2025, in accordance with the Scheduling Order, the Public Staff filed comments on DEP's PBR Rider Application. No other party filed comments.

On February 4, 2025, consistent with the notice provided by the Scheduling Order, the Commission issued an order canceling the public witness hearing as no written complaints or protests were received by the Commission's Chief Clerk.

On February 10, 2025, DEP filed reply comments.

Also, on February 10, 2025, DEP also filed Affidavits of Publication and the Web Posting for the Public Notice consistent with the Scheduling Order.

PBR RIDER APPLICATION

As is noted above, DEP's PBR Rider Application seeks approval to adjust the RDM Rider, ESM Rider, and PIM Rider to reflect the outcomes of Rate Year 1, and DEP proposes that the adjusted PBR Rider rates be in effect for a billing period beginning on April 1, 2025, through March 31, 2026. App. at 2.

RDM Rider

In the PBR Rider Application, DEP states that it is under-recovered with respect to the residential targeted revenue per customer and, accordingly, recommends adjusting the RDM Rider to collect the under-recovery. DEP requests an RDM Rider rate of 0.2324 cents per kWh. App. at 3; App. Ex. 1.

ESM Rider

In the PBR Rider Application, DEP states that its earned ROE, after consideration of the adjustments approved in the DEP PBR Rate Case Order, is 10.05%, which is within 50 basis points of the authorized ROE. As such, DEP states that no refund is due to customers and the appropriate ESM Rider rate is $0. App. at 3; App. Ex. 2.

PIM Rider

In the PBR Rider Application, DEP states that its performance in Rate Year 1 under the approved PIMs entitles it to recover $711,765 from customers through the PIM Rider. More particularly, DEP states that it earned a reward under the Time Differentiated and Dynamic Rate Enrollment PIM and Metric B of the Renewables Integration and Encouragement PIM. Accordingly, DEP requests approval of a PIM Rider rate of 0.002 cents per kWh. App. at 3; App. at Ex. 3.

PUBLIC STAFF COMMENTS

RDM Rider

The Public Staff notes that, regarding the RDM, DEP claims under-recovery of $39,390,682 and requests a rate of 0.2324 cents per kWh effective for residential customer accounts for the billing periods of April 1, 2025, through March 31, 2026. Public Staff Comments at 4.

The Public Staff recommends an adjustment to the carrying cost calculated by DEP and raises two other issues: (1) DEP's calculation of the Electric Vehicle (EV)

Revenue Adjustment, including the accuracy of the data used, and (2) the timing of the recovery of the RDM Rider from customers on certain net metering tariffs. *Id.* at 4–5.

Carrying Costs

The Public Staff states that DEP calculated a return on deferred balance using the after-tax weighted average cost of capital (WACC) approved in the DEP PBR Rate Case Order, divided by 12 to produce a monthly WACC percentage rate that is applied to the monthly cumulative deferred balance. This adds the prior month's interest to the cumulative deferred balance, compounding the interest monthly, which results in an annual return that is higher than the Commission-approved WACC. *Id.* at 5. The Public Staff asserts that the Commission-approved WACC is an annual rate, and that when calculating the return on a deferred balance on any period of less than a year, the WACC should be discounted to reflect the compounding effect of interest, such that the return calculated and recovered from ratepayers does not exceed the per annum WACC that the Commission approved. *Id.*

The Public Staff alleges that DEP's method results in an annual return interest rate of 6.8564% and the Public Staff's method results in an annual interest rate of 6.6499% (the WACC rate approved by the Commission in the DEP PBR Rate Case Order). *Id.* at 6. DEP's method yields a return that is 3.10% higher than the return the Public Staff calculates. Regarding the RDM Rider rate DEP requests in this proceeding, DEP's methodology produces a return of $2,060,137, and the Public Staff's methodology produces a return on $1,998,659. *Id.* at 6–7.

EV Revenues

The Public Staff states that DEP used three factors to compute the monthly EV sales revenues: (1) the quantity of EVs incremental to the baseline established in March 2023; (2) the Residential Rate per kWh adjusted for production variable operations and maintenance and fuel; and (3) the kWh usage estimated to be attributable to EV charging. *Id.* at 7–8. The Public Staff states that the census data DEP used in determining the quantity of EVs incremental to the baseline in the PBR Rider Application was released in December 2022, and the Geographic Information System (GIS) data was compiled in June 2023. The Public Staff explains that this time lag may lead to an under-quantification of EV sales because of the increasing population in North Carolina. *Id.* at 8.

The Public Staff notes that DEP's computation of the number of customers with EVs that receive electric service from DEP does not account for several factors, including: (1) households with multiple EVs; (2) EVs that are registered to a business; and (3) use of public charging stations or chargers at work instead of home. Further, the Public Staff explains that DEP's use of only Battery Electric Vehicles (BEV) data and not Plug-in Hybrid Electric Vehicles (PHEV) in its computation of EV sales benefits ratepayers because revenues from PHEV owners who charge at home are only included in the Gross Decoupling Deferral and are not reflected in the Incremental EV Revenue Adjustment. Stated differently, the Public Staff asserts that PHEV charging at a residence looks the same as charging a BEV if the charging levels are similar; therefore, excluding PHEVs from the estimation reduces the Total EV Incremental Revenue Adjustment, benefiting ratepayers. In summary, the Public Staff explains that DEP used stale data when calculating the incremental EV count, which resulted in 7,694 EVs being included in the calculation later than when they began using DEP electricity, which reduced the revenue adjustment by approximately $353,000. *Id.*at 8–9.

The Public Staff also states that the lack of direct knowledge concerning when and where EVs are charging means that the data collected within DEP's Make Ready Credit (MRC) program is being used as a proxy for determining the kWh Sales to all EV owners in DEP territory. The Public Staff notes that it does not know if the MRC participants are similar to all EV owners and thus does not know the accuracy of the use of the kWh sales from MRC participants as a proxy for the kWh sales for all EV owners. *Id.* at 9.

Importantly, the Public Staff states that, in general, it is satisfied that for purposes of this PBR Rider Application the computation presented in the Rate Year 1 RDM filing for EV kWh revenue is reasonable and complies with the PIMs Stipulation accepted by the Commission in the DEP PBR Rate Case Order. *Id.* at 10. The Public Staff notes, however, that Commission Rule R1-17B(g)(1)(f) calls for the submission of "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." The Public Staff states that it does not appear that DEP provided a projected number of EV customers. While the Public Staff acknowledges that this is not a factor in the computation of the EV Revenue Adjustment, the Public Staff explains that it may be beneficial in understanding the changing dynamics within the residential rate class. The Public Staff recommends that in future annual filings DEP provide a projected number of EV customers for the upcoming rate year. *Id.*

Timing for Customers on Certain Net Metering Tariffs

Regarding the timing of the recovery of the RDM Rider from customers on certain net metering tariffs, the Public Staff states that the RDM Rider, as proposed, will be updated for traditional rate tariffs beginning on April 1, 2025. However, net metering customers who participate in either the Net Meter Bridge (NMB) or Net Energy Metering (NEM) rate tariffs will not experience a rate change related to this rider update until January 1, 2026, when DEP will update the non-bypassable rate components (in which the RDM Rider rate is embedded) of its net metering rate tariffs in Docket No. E-100, Sub 180. *Id.* at 10–11. The Public Staff states that it has discussed this timing with DEP and is satisfied that it does not impact the rate requested in this proceeding. However, the Public Staff notes that allowing this eight-month delay for the NMB and NEM customers could distort the dollar amounts that will be recovered in future RDM Rider proceedings insofar as NMB and NEM customers may have a non-bypassable charge assessed on their monthly bill that is associated with an RDM Rider rate that is no longer in place. The Public Staff states that it will revisit this issue with DEP if complications arise in Rate Years 2 or 3 as to the timing of NMB and NEM customers' payments. *Id.* at 11.

In summary, regarding the RDM Rider, the Public Staff recommends that the Commission: (1) approve DEP's RDM Rider, subject to the Public Staff's carrying cost adjustment and allow DEP to recover the current cumulative RDM deferral in the amount of $39,329,204 and at a rate of 0.232 cents per kWh; (2) order DEP to follow the Public Staff's calculation methodology in future proceedings; and (3) require DEP to provide a projected number of EV customers for the upcoming rate year in its next PBR Rider filing. *Id.* at 11–12.

ESM Rider

The Public Staff states that, in calculating the ESM Rider rate, DEP utilized: (1) rate base as of September 30, 2024; (2) capital structure values from its September 30, 2024, ES-1 quarterly report; (3) NC Retail Net Operating Income (NOI) after adjustments; and (4) its annual debt costs. *Id.* at 16. The Public Staff explains that the ratio between earnings and rate base after capital structure allocations yields the ROE. The Public Staff notes that DEP's PBR Rider Application states that DEP's earned ROE, accounting for approved adjustments, is 10.05%, and that DEP states that because this earned ROE is within 50 basis points of the authorized ROE of 9.8%, it will not refund earnings from Rate Year 1. The Public Staff explains that DEP requests an ESM Rider rate of $0.00 per kWh, which would apply to all residential and non-residential customer accounts during the billing period of April 1, 2025, through March 31, 2026. *Id.* at 16–17.

The Public Staff states that the following adjustments to earnings are required for purposes of the ESM Rider: (1) weather normalization; (2) exclusion of penalties or rewards from PIMs incentives; (3) any incentives related to Demand Side Management/Energy Efficiency (DSM/EE) measures; and (4) the exclusion of EV sales. Further, the Public Staff explains that the Transmission Cost Allocation Stipulation (TCA Stipulation) approved by the DEP PBR Rate Case Order provides for an approximately $20 million adjustment in DEP's revenue requirement that should be included in the ESM Rider. *Id.* at 18.

The Public Staff states that when determining its final NC Retail NOI, DEP used information from its per book records and its September 30, 2024, ES-1 report and made the required adjustments, which resulted in a reduction to earnings of $16.35 million. *Id.*

The Public Staff agrees with each of DEP's earnings adjustment calculations, except for the DSM/EE adjustment. In its review, the Public Staff discovered that DEP did not include found revenues in its calculation of net lost revenues, resulting in an incorrect DSM/EE incentive adjustment. According to the Public Staff, DEP has confirmed the error. The correction reduces the DSM/EE adjustment slightly. With that correction, the five adjustments result in a reduction to earnings of $15.98 million. *Id.* at 19. Although DEP and the Public Staff agree regarding earnings, the Public Staff opposes: (1) DEP's calculation of rate base, equity, and cost of debt; and (2) DEP's calculation of capital structure. *Id.*

Rate Base, Equity, and Cost of Debt

The Public Staff disagrees with DEP's use of a single point in time, September 30, 2024, to calculate rate base, equity, and cost of debt and instead recommends the use of a 13-month average for calculating these figures. *Id.* It does so for the following reasons: (1) given that the NOI was earned over multiple months, it is appropriate that rate base, equity and cost of debt also be calculated over the same time period; (2) employing a multi-month average smooths the impact of infrequent of one-time actions or events on the calculations, protecting against circumstances in which anomalies close to a single point in time could distort calculations; (3) use of the most recent quarter end potentially underestimates the return if total equity or rate base climbs throughout the year; (4) use of a 13-month average would allow the determination of the actual annualized historical returns on equity; and (5) the Commission adopted rules for the ESM applicable to water and sewer utilities that require use of a 13-month average of the actual cost of debt when calculating the earned ROE. *Id.* at 19–21.

The Public Staff states that, in the electric utility context, the PBR Rule does not specify how rate base, equity, and cost of debt must be calculated. But electric utilities have been required to file a quarterly earnings surveillance report (ES-1 Report) for decades that sets forth quarterly earnings, rate base, debt, equity, and ROE. The Public Staff explains that the ES-1 Report uses a 13-month average for rate base, long-term debt, and equity, although there are small differences from the ESM Rider in how the totals are calculated. The Public Staff asserts that the concept of a 13-month average is "deeply embedded" in how electric utilities report their earnings. *Id.* at 23.

DEP's Use of Actual Capital Structure

The Public Staff opposes DEP's use of its actual capital structure calculated as of September 30, 2024, for calculating its proposed ESM Rider rate and instead recommends the use of DEP's Commission-approved capital structure. *Id.* at 24.

The Public Staff states that, as filed, DEP's proposed capital structure would consist of 45.88% debt and 54.12% equity. However, the DEP PBR Rate Case Order requires that DEP use a capital structure of 53.0% equity and 47.0% debt for ratemaking purposes. *Id.*

The Public Staff explains that using the actual capital structure conflicts with how the Commission sets rates in a general rate case proceeding, where the Commission determines the appropriate capital structure for ratemaking purposes which is often a pro forma or hypothetical capital structure. *Id.* The Public Staff states that a utility calculating its earnings for an ESM Rider should not be permitted to use a capital structure other than what was approved in the rate case over the relatively short period covered by an MYRP. *Id.* The Public Staff notes that the Commission requires that water and sewer utilities use their Commission approved capital structure for evaluating earnings for purposes of the water and sewer ESM. The Public Staff also explains that even slight changes in capital structure can have substantial impacts. *Id.* at 25. The Public Staff contends that, if the

Commission were to allow the use of DEP's actual capital structure for purposes of calculating the ESM Rider, the capital structure should not be based on a single point in time but rather consist of a multi-month average for the same reasons discussed above regarding rate base, debt, and equity. *Id.* at 25–26.

Public Staff Calculation of ESM Rider Rate

The Public Staff states that DEP's NC Retail earnings for Rate Year 1, as corrected by the Public Staff to account for the error in the DSM/EE incentive adjustment, are $1,101,791,935. *Id.* at 26. The Public Staff explains that using its recommended 13-month average and DEP's approved capital structure of 53.00% equity and 47.00% debt results in a 10.58% ROE. *Id.* at 27. The Public Staff also relies upon a 4.10% cost of debt. *Id.* The Public Staff states that this return would exceed the 50 basis point threshold and that, therefore, the ESM Rider should result in a refund to ratepayers of $29,148,002 at a rate of 0.076 cents per kWh. The Public Staff notes that its recommendation diverges from DEP's proposed ESM Rider rate of $0.00 per kWh, which is based upon a 4.05% cost of debt, a capital structure of 54.12% equity and 45.88% debt, and an ROE of 10.05%. *Id.* at 27–28.

The Public Staff recommends that the Commission approve DEP's ESM Rider, with the correction to the DSM/EE incentive adjustment to earnings, and subject to: (1) the use of a 13-month average for calculating rate base, cost of debt, and equity; and (2) the use of the Commission-approved capital structure. *Id.* at 28.

Rate Comparisons and Impacts

The Public Staff explains that, beginning April 1, 2025, DEP's proposed rates would result in a 1.52% monthly increase of $2.34, from $154.33 to $156.67, to an average residential customer bill compared to rates currently in effect. In contrast, the Public Staff states that, beginning April 1, 2025, its recommended rates would result in a 1.02% monthly increase of $1.58, from $154.33 to $155.91, to an average residential customer bill compared to rates currently in effect. *Id.* at 28–29.

Finally, the Public Staff notes that DEP used the most current 2023 Cost of Service Study allocation factors to allocate the system amounts to NC Retail. Since only three months of Rate Year 1 fell in 2023, the Public Staff states that it will continue to evaluate the impact of this and any other timing disparities on the ESM earnings calculation. The Public Staff also explains that DEP's per book revenue used in the ESM rider calculation includes revenue from all the annual riders, the accrued RDM rider revenue, and the accrued PIM rider revenue. The Public Staff states that it will also continue to evaluate the impact of the inclusion of these revenues in future proceedings. *Id.* at 29.

PIM Rider

The Public Staff explains that, according to DEP's PBR Rider Application, DEP's performance in Rate Year 1 under its approved PIMs entitles it to recover $711,765. The Public Staff notes that DEP asserts that it earned a reward under the Time Differentiated and Dynamic Rate Enrollment PIM and Metric B of the Renewable Integration and Encouragement PIM. The Public Staff further states that DEP requested a rate of 0.002 cents per kWh for the PIM Rider which would be effective for all residential and non-residential customer accounts during the billing period of April 1, 2025, through March 31, 2026. *Id.* at 12.

Time Differentiated and Dynamic Rate Enrollment PIM

The Public Staff notes that DEP's PBR Rider Application states that DEP achieved 8,953 incremental customer subscriptions in its PIM-qualifying rate tariffs in Rate Year 1, resulting in a reward of $44,765. *Id.* at 13.

Renewables Integration and Encouragement PIM

The Public Staff explains that the Renewables Integration and Encouragement PIM is broken into three different metrics which each focus on renewable energy development from a different perspective. *Id.* at 14.

The Public Staff states that Metric A rewards DEP for interconnecting distributed energy resources that are located on customer premises and is measured by the total number of NEM projects connected by DEP during each rate year that are incremental to a baseline level calculated using a rolling three-year average number of NEM interconnections. *Id*. The Public Staff explains that DEP did not meet the required threshold for Metric A for Rate Year 1, as determined by the rolling three-year average, and therefore did not earn a reward for Metric A. *Id.*

Metric B, the Public Staff states, rewards DEP for designing, seeking approval of, and enrolling large customers in new commercial and industrial (C&I) customer renewables programs. *Id*. The Public Staff explains that Metric B performance is calculated based on the cumulative share of C&I customer renewables program capacity subscribed by eligible customers. *Id*. at 14–15. The Public Staff states that for Rate Year 1, DEP met the second threshold for customer subscription levels under Metric B (≥ 50% subscribed), resulting in a reward of $667,000. *Id.* at 15.

The Public Staff notes that Metric C rewards DEP for meeting or exceeding performance thresholds for interconnected megawatts (MW) of utility-scale renewable resources. *Id*. The Public Staff explains that no targets were set for Metric C for Rate Year 1 and that DEP's performance will be evaluated beginning in Rate Year 2. *Id*.

Agreeing with DEP's calculation of the PIM Rider rate and recommending approval as proposed by DEP, the Public Staff concludes that DEP's performance in Rate Year 1 results in a reward of $711,765 and a PIM Rider rate of 0.002 cents per kWh. *Id.*

Finally, the Public Staff notes that, as with the RDM Rider, DEP's net metering customers who participate in either the NMB or NEM tariffs will experience an eight-month delay in the payment of the PIM Rider that could distort the dollar amounts that will be recovered through future PIM Rider proceedings. *Id.* The Public Staff states that it plans to revisit this issue with DEP if complications arise in Rate Years 2 or 3 as to the timing of NMB and NEM customers' payments. *Id*.

DEP REPLY COMMENTS

On reply, DEP states that the PBR Annual Review process needs to be clearly defined before the start of a MYRP and alleges that the Public Staff is attempting to change the rules of the process retroactively after completion of the first rate year. DEP Reply Comments at 1–2. DEP explains that the structure of the RDM, ESM, and PIM Riders needs to be established up front so that DEP and its shareholders can operate the business under clearly defined rules and processes. *Id.* at 2. DEP asserts that, while it laid out in detail the exact mechanics that should be used in the PBR Annual Review process for determining the outcomes from each rate year and the resulting rider adjustments, prior to this proceeding, the Public Staff never recommended a change to DEP's proposed structure and methodology for PBR Riders. Instead, DEP argues that the Public Staff withheld its recommended changes to DEP's ESM and RDM Riders until after the first rate year was completed. DEP contends that the issues raised by the Public Staff's comments would typically be litigated in a rate case. *Id.* at 2–3.

In DEP's view, the structure and methodology of the RDM and ESM Riders were established in the DEP PBR Rate Case proceeding and should not be relitigated through the PBR Annual Review process. *Id.* at 3. DEP states that the PBR Statute provides that the RDM and ESM Riders are to be established in a PBR rate case and that the Commission addressed the question of whether the structure and methodology of the RDM and ESM Riders can be relitigated during a PBR Annual Review in the rulemaking proceeding for the PBR Rule. *Id.* at 3–4. DEP asserts that it provided detail regarding the structure and methodology of the RDM and ESM Riders in the DEP PBR Rate Case proceeding, including the calculation methodologies that the Public Staff is now challenging. DEP contends that the Public Staff did not dispute DEP's proposed methodologies in that proceeding, and the DEP PBR Rate Case Order approved the RDM and ESM as proposed by DEP. *Id.* at 4.

DEP explains that DEP and Duke Energy Carolinas, LLC (DEC, and, together with DEP, Duke) both argued in their respective PBR rate cases that the Annual Review should not be a mini rate case so that these kinds of disputes could be avoided, and that Duke's proposal for the PBR Rule established a framework that would provide opportunity for the Public Staff and the Commission to review the annual filing and updated PBR Riders to ensure accuracy and fidelity to the structures and methodology that the Commission approved in the DEP PBR Rate Case Order. DEP further states that Duke also argued for the use of the utility's actual cost of debt in determining the ESM in the PBR Rule rulemaking proceeding. *Id.* at 4–5.

DEP states that the Commission adopted in large part Duke's proposals outlining the PBR Annual Review process, specifically ruled that adjustments to the ESM should not be litigated during the Annual Review, and ruled that DEP should use the actual cost of debt during the relevant rate year when calculating its ESM. *Id.* at 6. DEP argues that in the DEP PBR Rate Case proceeding, it adhered to the PBR Rule in its proposed RDM and ESM, providing through its witnesses and exhibits extensive detail describing how the ESM and RDM would work, including how carrying costs would be calculated for purposes of the RDM and the methodology for the ESM calculation, issues the Public Staff now disputes. DEP asserts that its testimony and evidence with respect to these issues was unrebutted in the DEP PBR Rate Case proceeding. DEP states that, in the PBR Order, the Commission approved DEP's proposed RDM and DEP's proposed ESM and the proposed tariff for the associated rider. DEP contends that the Public Staff is attempting to retroactively change the rules of the process. *Id.* at 7–8.

RDM Rider

DEP notes that, for Rate Year 1, its RDM is a regulatory asset. DEP explains that, for the first time, the Public Staff recommends a change in how carrying costs should be calculated that would reduce the amount sought for recovery through the RDM by $61,478 and asserts that the Public Staff's recommended adjustment is inequitable. DEP cites to testimony and exhibits in the DEP PBR Rate Case that specified the methodology for calculating carrying costs on the RDM deferral balance, which includes the monthly compounding of the return. DEP asserts that, in the DEP PBR Rate Case, neither the Public Staff nor any other party offered testimony or evidence challenging DEP's methodology for calculating carrying costs for the RDM. DEP also states that the Commission concluded in the DEP PBR Rate Case that the RDM proposed by DEP was consistent with the PBR Statute and the PBR Rule. DEP explains that it followed the method for calculating carrying costs that DEP set forth in testimony and exhibits in DEP's quarterly decoupling reports and its calculation of the RDM Rider for Rate Year 1. DEP states that this is the first time that the Public Staff has recommended that, when calculating carrying costs on a deferred decoupling balance, the WACC should be discounted to remove the compounding effect of interest.

DEP characterizes the Public Staff's proposed change as an attempt to relitigate the structure and methodology of the RDM which DEP asserts was unchallenged and resolved in DEP's PBR Rate Case proceeding. DEP notes that it showed that carrying costs were compounded monthly in its quarterly reports filed on February 14, May 15, August 14, and November 14, 2024, which the Public Staff reviewed. DEP further argues that its method for calculating carrying costs is the correct method and is consistent with basic financial principles. DEP asserts that monthly compounding is appropriate because it reflects the fact that DEP is not receiving monthly payments of the interest that is accruing. DEP concludes that it is therefore appropriate to add the prior month's interest to the deferral balance when calculating carrying costs because the amounts are not being received from or paid to customers on a monthly basis. DEP states that compounding interest is standard practice for loans or borrowing arrangements and should be applied to deferrals because deferrals essentially are borrowing arrangements between DEP's investors and its customers. Further, DEP argues, the methodology applied in this proceeding is consistent with that applied for other deferrals to which the Public Staff has not historically objected. Lastly, DEP asserts that the calculation of carrying costs and monthly compounding is symmetrical, meaning that DEP takes the same approach regardless of whether the deferral is a regulatory asset or a regulatory liability. If the RDM resulted in money owed to DEP's residential customers, DEP would compound interest monthly in the same manner.

ESM Rider

DEP urges the Commission to reject the Public Staff's recommended adjustments to the ESM Rider. DEP states that for Rate Year 1 its adjusted earnings do not exceed the authorized ROE plus 50 basis points, and thus no amounts are due to customers under the ESM Rider. *Id.* at 8. DEP states that the Public Staff's recommended pro forma adjustments[1] to the methodology for determining the adjusted ROE for purposes of the ESM increase DEP's adjusted ROE such that DEP's adjusted earnings exceed the authorized ROE plus 50 basis points, resulting in a refund to customers through the ESM Rider of approximately $29 million. According to DEP, the use of the 13-month average to calculate rate base, cost of equity, and cost of debt would account for the entire recommended refund of approximately $29 million. *Id.* at 8–9.

DEP contends that litigating pro forma adjustments through the PBR Annual Review process undermines the efficiency benefit of the PBR construct. DEP explains that it detailed its ESM pro forma adjustments in the DEP PBR Rate Case proceeding and notes that the methodology it recommended in that case for calculating adjusted earnings for purposes of the ESM is the same method that it uses for a base rate case. DEP explains that it uses end of period books values, then applies pro forma adjustments, and uses the annualized cost of debt and proposed capital structure to determine the annual revenue needed to provide its investors with a reasonable return. *Id.* at 9–10.

DEP states that, in DEP's PBR Rate Case, DEP witness Abernathy described DEP's proposed ESM and detailed the pro forma adjustments to earnings that DEP proposed for the ESM calculation. *Id.* at 10. DEP states that it provided a template showing the calculation for the annual adjustment to the ESM Rider that included a comparison of the approved ROE plus 50 basis points to the adjusted ESM-calculated ROE. *Id.* at 10–11. DEP also states that it provided details regarding the calculations for determining the ROE, specifically including the proposal to use end of period rate base, which the Public Staff now contests. *Id.* at 11. Further, DEP states that after the Commission's DEP PBR Rate Case Order, DEP and the Public Staff met to discuss the ESM calculation and the ESM pro forma adjustments, as the Commission had directed them to do in order to develop a quarterly reporting form that would enable the Commission to analyze the information and determine the appropriate application and operation of the ESM Rider. *Id.* at 12–13. DEP states that at the October 17, 2023 meeting, it shared extensive details on its ESM methodology and noted several times that it planned to use an end of period rate base for both the ESM quarterly reporting and the

[1] As described above, the two pro forma adjustments are: (1) use of a 13-month average to calculate rate base, cost of equity, and cost of debt; and (2) use of DEP's approved capital structure instead of its actual capital structure as of September 30, 2024.

ESM annual calculation. DEP explains that the Public Staff did not raise concerns at that time. DEP also asserts that on December 1, 2023, the Public Staff confirmed verbally in another meeting that they did not have concerns with the ESM calculation or adjustments. *Id.* at 13.

DEP contends that all the required ESM quarterly reports that DEP filed (on February 29, May 30, August 29, and December 2, 2024) clearly used end of period rate base. DEP also argues that the Public Staff should have raised any concerns when DEP filed those quarterly reports if they truly thought DEP's methodology was inappropriate. *Id.* at 14. DEP notes that the Public Staff had the opportunity to oppose Duke's proposed ESM methodology and pro forma adjustments in the DEC's PBR Rate Case proceeding, where DEP states that DEC laid out in discovery the detailed calculation of ESM ROE using end of period rate base and actual capital structure. DEP states that the Public Staff did not oppose DEC's ESM methodology in that case and did not propose adjustments to recast rate base to a 13-month average or use a last authorized capital structure. *Id.* at 14–15.

DEP also contends that the adjustments the Public Staff proposes are substantively flawed. DEP notes that the Public Staff points to the ES-1 reports as support for use of the 13-month average and states that the Commission considered the question of whether the ES-1 reports were an appropriate starting point for calculating actual ROE under the ESM in the PBR Order. Specifically, DEP states that the Commission found that, for purposes of determining whether earnings exceeded the authorized ROE for purposes of the ESM, the ES-1 reports were not intended to be used as a method to evaluate the ESM Rider. *Id.* at 15. DEP reiterates that end of period rate base is used for base rate cases and that DEP also uses end of period balances in its deferral requests to show its adjusted ROE for the Commission to consider in its earnings test. DEP states that the Public Staff has opposed several of the deferrals but has not disputed DEP's use of end of period rate base. *Id.* at 17.

DEP also rejects the Public Staff's argument that the Commission's rules in the water context (Rule R1-17A, implementing the Water and Sewer Investment Plan, or WSIP) should be instructive here. DEP notes that the rulemaking proceedings for the WSIP and for PBR overlapped and that the Public Staff could have proposed similar language for the ESM section of the PBR Rule specifying the use of the 13-month average for rate base and a calculation of earned ROE based on the 13-month average cost of debt and the capital structure established in the utility's last rate case, but the Public Staff did not do so. *Id.* at 17–18.

DEP contends that, if the Commission considers the Public Staff's recommended pro forma adjustments to the ESM, it must also consider and incorporate additional pro forma adjustments to the ESM. DEP does not believe that this is the right outcome but notes that during Rate Year 1 for DEP, there were unique items that, in a rate case, would lead to pro forma adjustments because the items in question impacted earnings in a way that would normally be adjusted. DEP notes that it, out of principle, did not make adjustments for those items in the Annual Review because the items were not included among the pro forma adjustments that the Commission approved. *Id.* at 19–20. Exhibit 1 to DEP's reply comments demonstrates the adjustments which are: (1) normalization of the reporting period for a one time true-up related to the Joint Agency Asset Rider; (2) an update of allocation factors resulting from a change in wholesale load and a related change in purchase power expense; and (3) annualizing depreciation expense based on end of period plant balances. DEP states that these additional adjustments total over $100 million in reduction to earnings and would more than offset the Public Staff's proposed adjustments that increase ROE. DEP also notes that it is prepared to present testimony and exhibits to support these additional adjustments if necessary. *Id.* at 20–21.

DISCUSSION AND CONCLUSIONS

Considering the foregoing, the DEP PBR Rate Case Order, and the record in the DEP PBR Rate Case proceeding, the Commission approves the PBR Riders as proposed by DEP. The Commission notes that the Public Staff has raised important and relevant issues but agrees with DEP that the methodologies and structures for these riders during the term of the current DEP MYRP were required to be, and were, established in the DEP PBR Rate Case. The Commission was clear in the DEP PBR Rate Case Order that the PBR Annual Review should not be turned into a mini rate case and that doing so would eliminate the regulatory efficiency that was a goal of the PBR Statute.

As DEP notes, it would be unreasonable and unfair for such methodologies *not* to be established at the front end of a MYRP period. Both the PBR Statute and the PBR Rule contemplate such up-front methodology development. Moreover, in seeking approval for both the RDM and the ESM, DEP presented in detail the methodologies by which those riders would be adjusted, which were effectively approved by this Commission in the PBR Rate Case Order.[2] The Commission further agrees that changing the ESM and RDM now would not be a fair result for DEP, which understandably relied on the Commission's approval in the DEP PBR Rate Case of those MYRP components in large part as DEP proposed them. Nor would it be fair to consider pro forma adjustments newly proposed by the Public Staff without providing DEP the opportunity to propose pro forma adjustments of its own – which would convert this proceeding into exactly the sort of mini rate case the PBR Statute and PBR Rule seek to avoid.

The Commission advises the Public Staff to bring any concerns or issues with DEP's ESM, RDM, or PIMs in the next PBR rate case that DEP files, where the Commission will give them due consideration. A rate case proceeding is the appropriate forum for litigation of these issues. It may very well be that there are lessons learned from the first PBR MYRPs that inform the Commission's deliberations regarding the PBR components and possibly spur changes to those components in future PBR rate cases.

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[2] The Commission notes that DEP filed RDM reports for each quarter of Rate Year 1 as required by the PBR Rule in which it calculated carrying costs for purposes of the RDM using the methodology proposed by DEP in the PBR Rate Case and approved in the PBR Rate Case Order. Similarly, DEP filed earnings reports for each quarter of Rate year 1 as required by the PBR Rule in which it calculated ROE for purposes of the ESM using the methodology proposed by DEP in the PBR Rate Case and approved in the PBR Rate Case Order.

RDM Rider

The Commission approves the RDM Rider as proposed by DEP. Specifically, DEP is allowed to recover $39,390,682 at a rate of 0.2324 cents per kWh effective for residential customer accounts for the billing periods of April 1, 2025, through March 31, 2026.

For the purposes of this MYRP, the Commission reaffirms its prior approval of the monthly compounding of interest in calculating carrying costs and specifically approves DEP's calculation of such costs.

The Commission also specifically approves DEP's calculation of the EV Revenue Adjustment. The Commission agrees with the Public Staff that in future Annual Review filings DEP should provide a projected number of EV customers for the upcoming rate year and therefore directs DEP to do so.

Regarding the timing of the recovery of the RDM Rider from customers on net metering tariffs, the Commission agrees with the Public Staff's "wait and see" approach and expects both DEP and the Public Staff to provide information and analysis of any complications arising from the collection of the under-recovery from customers on net metering tariffs in the next PBR Annual Review proceeding.

ESM Rider

The Commission approves the ESM Rider as proposed by DEP, except for the DSM/EE earnings adjustment recommended by the Public Staff. DEP did not dispute the Public Staff's contention that DEP erroneously failed to include found revenues in its calculation of net lost revenues attributable to DSM/EE, resulting in an incorrect DSM/EE incentive adjustment, and the Public Staff's comments indicate that DEP in fact had confirmed the error. The Commission approves the revised DSM/EE adjustment as calculated by the Public Staff and the corrected total adjustments that result in a reduction to earnings of $15.98 million. The Commission agrees that the ESM Rider as proposed by DEP and modified by the Public Staff yields no refund to customers and the appropriate ESM Rider rate is $0.

For the purposes of this MYRP, the Commission reaffirms its prior approval of DEP's use of a single point in time (September 30, 2024) to calculate rate base, equity, and cost of debt and declines to adopt the Public Staff's recommendation that the Commission order the use of a 13-month average for calculating these figures. Similarly, the Commission reaffirms its prior approval of DEP's use of actual capital structure at a single point in time (again, September 30, 2024) for calculating its proposed ESM Rider rate and declines to adopt the Public Staff recommendation that the Commission order the use of DEP's Commission-approved capital structure when calculating its proposed ESM Rider rate. Again, the Commission makes these decisions based on the DEP PBR Rate Case Order and the unfairness that would result from modifying the previously approved methodology at this stage of the process. Should the Public Staff continue to have concerns regarding DEP's methodology for calculating rate base, equity, and cost of debt, or the ESM Rider rate in general, it is appropriate for the Public Staff to raise those concerns in the next rate case proceeding where the Commission will give them due consideration.

PIM Rider

The Commission approves the PIM Rider as proposed by DEP and as recommended by the Public Staff. Specifically, the Commission approves a PIM Rider rate of 0.002 cents per kWh allowing DEP to recover an amount of $711,765 as a reward under the Time Differentiated and Dynamic Rate Enrollment PIM and Metric B of the Renewables Integration and Encouragement PIM.

As with the RDM Rider, regarding the timing of the recovery of the PIM Rider from customers on net metering tariffs, the Commission agrees with the Public Staff's "wait and see" approach and expects both DEP and the Public Staff to provide information and analysis of any complications arising from the collection of the reward from customers on net metering tariffs in the next PBR Annual Review proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That the billing period for the PBR Riders that DEP proposes, April 1, 2025, through March 31, 2026, is approved;

2. That the RDM Rider is approved as proposed by DEP, and DEP is allowed to recover $39,390,682 at a rate of 0.2324 cents per kWh effective for residential customer accounts during the billing period;

3. That, consistent with the PBR Rate Case Order, DEP's calculation of carrying costs, including the monthly compounding of interest, is approved for purposes of this MYRP;

4. That, consistent with the PBR Rate Case Order, DEP's calculation of the EV Revenue Adjustment is approved for purposes of this MYRP;

5. That DEP shall provide a projected number of EV customers for the upcoming rate year in its next PBR Annual Review proceeding;

6. That DEP and the Public Staff shall provide information and analysis of any complications arising from the timing of either collection of the under-recovery through the RDM Rider or the reward through the PIM Rider from customers on net metering tariffs in the next PBR Annual Review proceeding;

7. That the ESM Rider as proposed by DEP, including the DSM/EE adjustment as modified by the Public Staff, is approved, and the ESM Rider Rate is $0.00;

8. That, consistent with the PBR Rate Case Order, DEP's use of a single point in time to calculate rate base, equity, and cost of debt is approved for purposes of this MYRP;

9. That, consistent with the PBR Rate Case Order, DEP's use of its actual capital structure at a single point in time for purposes of calculating the proposed ESM Rider rate is approved for purposes of this MYRP;

10. That the PIM Rider as proposed by DEP is approved; and

11. That a PIM Rider rate of 0.002 cents per kWh, allowing DEP to recover an amount of $711,765 as a reward under the Time Differentiated and Dynamic Rate Enrollment PIM and Metric B of the Renewables Integration and Encouragement PIM, is approved.

ISSUED BY ORDER OF THE COMMISSION.

This the12th day of March, 2025.

NORTH CAROLINA UTILITIES COMMISSION

Taylor C. Berry

Taylor C. Berry, Deputy Clerk

Commissioner Jeffrey A. Hughes dissents in part.

DOCKET NO. E-2, SUB 1361

Commissioner Jeffrey A. Hughes, dissenting in part:

I agree with the majority's decision regarding the RDM and PIM riders, but I cannot support the decision regarding the ESM rider and therefore partially dissent to this order.

There is clearly a major disagreement between the Public Staff and DEP related to the methodology for calculating the ROE value that is benchmarked against the ROE authorized in the DEP PBR Rate Case Order to calculate the ESM rider.

DEP followed a methodology that was not laid out explicitly in the text of the DEP PBR Rate Case Order but rather was implied through an attachment that was presented in testimony, and which DEP feels the Public Staff should have flagged and reacted to earlier. The Public Staff stands behind a significantly different formula that, according to their comments in this proceeding, was more historically consistent and comparable to similar practices. To me, this appears to be an unfortunate misunderstanding with a potentially significant financial impact on both DEP and customers. I did not see any evidence that there was misleading or nefarious intent on the part of either DEP or the Public Staff, rather an honest disagreement.

While it is clear that the financial impact to DEP of using the Public Staff's proposed methodology, rather than what was presented in their testimony, is significant and worth fighting for, I did not find their comments in this case convincing enough to rule out incorporating some of the Public Staff's proposed methodology – possibly into the calculation of the Rate Year 1 ESM rider but more likely into at least the calculation of the Rate Years 2 and 3 ESM riders.

The majority's opinion seems to rule out a compromise addressing this misunderstanding in a way that I feel would still be fair to DEP but also would take into consideration fairness to the customers.

As far as characterizing the misunderstanding, I found the Public Staff's views expressed in their proposed order more accurate and convincing than I found DEP's depiction of the issue. I agree with the Public Staff that this misunderstanding deals with a fundamental methodology issue and not simply a pro forma adjustment issue. It is unfortunate that this misunderstanding was not identified and addressed during the DEP PBR Rate Case, but as the Public Staff points out, this was an extremely novel case that involved dozens of issues and decisions.

DEP begins its reply comments by comparing the disagreements they had with the Public Staff to the Commission (at the urging of the Public Staff) forcing DEP to run in a race where they had no idea of what the course looked like. After reading the record, it seems to me that, if this was a running race, both parties laid out the majority of the course together in good faith but evidently had slightly different views related to a relatively small aspect of the course that left both parties frustrated and looking to the track judge to help clarify it.

DEP adamantly suggests that to run in this type of race without complete knowledge of the course would lead them to run a very different race than they would have otherwise. While DEP was quite insistent about this point, I did not see any specifics of how differently they would have run the race (managed their operations) if the Public Staff's methodology was in place. Would they have run faster or slower, tried harder or less hard to increase their earnings?

Now that we know there was no agreement on the core ESM methodology as we had hoped, I cannot allow this misunderstanding to potentially cost the ratepayers millions of dollars without at least considering other options or compromises.