

Request for Quotes – Performance-Based Ratemaking Consultant to the Public Staff

November 1, 2021

Introduction

The Public Staff – N.C. Utilities Commission (Public Staff) is a state agency that represents customer interests in proceedings before the North Carolina Utilities Commission (Commission). The Public Staff is independent of the Commission.

The Public Staff, with approval, may hire independent contractors to provide subject matter expertise, pursuant to N.C. General Statute § 62-15(h):

The executive director is authorized to employ, subject to approval by the State Budget Director, expert witnesses and such other professional expertise as the executive director may deem necessary from time to time to assist the public staff in its participation in Commission proceedings, and the compensation and expenses therefor shall be paid by the utility or utilities participating in said proceedings. Such compensation and expenses shall be treated by the Commission, for rate-making purposes, in a manner generally consistent with its treatment of similar expenditures incurred by utilities in the presentation of their cases before the Commission. An accounting of such compensation and expenses shall be reported annually to the Joint Legislative Commission on Governmental Operations and to the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

The Public Staff seeks a consultant to assist with the development of rules for performance-based ratemaking (PBR) in Commission Docket No. E-100, Sub 178, develop recommendations for policy goals to be adopted by the Commission, and assist with general rate cases in which an application for a multi-year rate plan (MYRP) that includes PBR is filed.

Scope of Work

The consultant will review Part 2 of North Carolina S.L. 2021-165 ("HB 591")¹ enacting PBR for North Carolina electric public utilities, advise the Public Staff in the development of its comments and proposed rule to be filed in Docket No. E-100, Sub 178² if time allows, review comments and proposed rules of other parties in Docket No. E-100, Sub 178, assist and advise the Public Staff in the development of reply comments, assist and advise the Public Staff in the process of the Commission's adoption of policy goals, and

¹ <https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2021-2022/SL2021-165.pdf>.

² <https://starw1.ncuc.net/NCUC/PSC/DocketDetails.aspx?DocketId=84881172-d122-403e-b93d-0affa209dbea>.

assist and advise the Public Staff in general rate cases that include an application for a MYRP that includes PBR, which may include testifying as an expert witness on a utility's proposed MYRP and related cost projections, performance incentive metrics, earning sharing mechanism, and decoupling mechanism.

Comments and proposed rules are to be filed in Docket No. E-100, Sub 178 on November 9, 2021, with reply comments to be filed on December 7, 2021. The Commission has not yet indicated the process by which it will adopt policy goals. The Public Staff expects at least one electric public utility to file a general rate case with an application for a MYRP in the next two years. A typical general rate case timeline in electric cases is approximately nine months from the filing of the application to the issuance of an order by the Commission. Normally, the Public Staff has approximately five months to complete its review of the application and submit written testimony setting forth its findings and recommendations. An evidentiary hearing is usually held approximately one month later. Development of rules and policy goals for PBR, as well as the investigation of an application for a MYRP that includes PBR will require more specialized expertise and more resources than the Public Staff has available in-house. The Public Staff seeks to hire a consultant with the appropriate expertise and resources to advise the Public Staff and assist with these tasks, including providing expert testimony. Ideally, we would like to have a contract in place with the consultant ready to perform by December 1, 2021.

The scope of work will include:

1. Reviewing S.L. 2021-165.
2. Reviewing comments and proposed rules filed by the Public Staff and other parties in Docket No. E-100, Sub 178.
3. Assisting in the process for the development of the Commission's policy goals.
4. Assisting in the development of the Public Staff's position and testimony on an application for a MYRP that includes PBR. Issues include, but are not limited to, projecting costs, performance incentive metrics, decoupling mechanism, earnings sharing mechanism, and related rate design.
5. Preparing and submitting bi-weekly reports on the progress of the investigation or to-date results of the investigation as appropriate.
6. Being available for weekly conference calls with the Public Staff.

As part of this scope of work, the consultant:

- Will prepare written discovery questions and document requests for utility response.
- Will participate with Public Staff personnel in site visits, interviews, and conference calls with the utilities.

- Will communicate regularly with Public Staff personnel regarding project status and planning.
- May submit a final report to the Public Staff with detailed analysis and recommendations.
- May draft and pre-file with the Commission written direct testimony and supporting exhibits on relevant issues on behalf of the Public Staff.
- May attend evidentiary hearings and orally defend the Public Staff's position on cross-examination and Commissioner questions.
- Will assist the Public Staff in draft briefs and proposed orders.

Issues related to PBR and applications for a MYRP including PBR will be governed by Commission-established litigation deadlines, so the consultant must complete its duties within the time frames specified by the Public Staff. Thus, the consultant must have available sufficient staff resources to review and provide analysis of voluminous information within a few months. Time is of the essence in completing tasks for the Public Staff.

The consultant may be called upon to provide written and oral testimony in a litigated proceeding before the Commission. Therefore, preference will be given for experience in testifying in similar regulatory proceedings, though that is not a requirement. Proposals should outline cost differentials associated with providing written and oral testimony before the Commission.

The Public Staff cannot easily predict the consultant's time commitment for this project, so in addition to a not-to-exceed total contract dollar value based on an estimated two-year timeframe for the work, the Public Staff expects to receive quotes based on personnel hourly rates plus a schedule of any incidental charges (e.g., photocopying costs).

Consultant must bill at least monthly. Invoices must include a list of each consultant employee (or contractor if approved in advance by the Public Staff) who worked on the billed items, his/her hourly rates, the number of hours worked, the nature of the work, the Commission docket number of the case being worked on.

Consultant may be required to execute confidentiality agreements with the utilities or other parties whose documents are being reviewed by the Public Staff and consultant.

Consultant shall be an independent contractor. The Public Staff shall have the right to unlimited use of all work product prepared by the consultant pursuant to the contract executed under this RFQ.

Required Information in Quotation

All responses to this RFQ must be sent electronically to lucy.edmondson@psncuc.nc.gov. Responses should include:

- A statement of the consultant's qualifications to perform the requested work, with a focus on experience in PBR and the development of MYRPs to the extent possible.
- A list of personnel, to the extent known, who will provide the consulting services to the Public Staff, their hourly rates, and their credentials including academic background and work experience.
- A list of possible non-personnel costs and the associated rates where applicable. (E.g., any separate charges for communications, copying, or travel time.)
- At least two references who can speak to previous work done by the consultant, with a focus on experience in electric utility PBR and MYRP to the extent possible.
- A description of similar prior projects performed by the consultant, including names of clients (if not confidential), the nature of the analysis performed, and the timeframe of that performance.
- A statement affirming that the consultant has not performed work for Dominion Energy, Inc., Virginia Power and Light Company, Dominion Energy North Carolina, Duke Energy, Inc., Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, or any of their affiliates. If the consultant has performed any work under contract for these companies or their affiliates in the past, or expects to perform work in the future, it must identify all such work, indicate whether any such work is ongoing, and explain why such work would not create a conflict of interest if the consultant is retained to work on behalf of the Public Staff.
- A statement of any past or present criminal charges (state or federal), and any government debarments from contracts, made against the consulting business or its current personnel.
- The consultant's federal employer identification number.
- The name, job title, mailing address, physical address, telephone number, and email address of the person who has the legal authority to issue the quotation on behalf of the consultant and to legally bind the consultant in a contract for consulting services pursuant to this RFQ.

- A statement that the consultant accepts all the provisions, terms, and conditions of this RFQ.
- A statement of the not-to-exceed dollar amount for providing consulting services pursuant to this RFQ.

Procedure

All inquiries about procedures and responses to this RFQ should be directed in writing to Lucy Edmondson, email at lucy.edmondson@psncuc.nc.gov.

Any questions about the RFQ scope of work may be sent to the Public Staff by email to Lucy Edmondson until 5:00 pm (Eastern) on November 8, 2021. Responses will be in writing via email, and will be made available upon request.

Quotations in response to this RFQ must be received by the Public Staff no later than 5:00 p.m. (Eastern) on November 10, 2021.

All quotations will be kept confidential by the Public Staff until a contract for consulting services has been executed.

The Public Staff hopes to select a consultant from the quotation submissions in November 2021; however, the process may take longer if we have follow-up questions on the quotation. We must also obtain approval thereafter from the State Budget Director. Acceptance of a contract for consulting services pursuant to this RFQ is subject to both the Public Staff's discretionary judgment, and also approval by the State Budget Director.

The contract for consulting services pursuant to this RFQ shall consist of this RFQ, the written quotation in response to the RFQ, and a signed acceptance letter from an authorized employee of the Public Staff to the consultant.

GENERAL CONTRACT TERMS AND CONDITIONS

1. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain confidential trade secrets that the Consultant does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Consultant, with specific trade secret information enclosed in boxes or similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Consultant may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G. S. §132-1.2. Any material labeled as confidential constitutes a representation by the Consultant that it has made a reasonable effort in good faith to

determine that such material is, in fact, a trade secret under G. S. §132-1.2. Consultants are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.

2. **INFORMAL COMMENTS:** The State shall not be bound by informal explanations, instructions, or information given at any time by anyone on behalf of the State during the competitive process or after award. The State is bound only by information provided in this RFQ and in formal Addenda issued.
3. **COST FOR QUOTE PREPARATION:** Any costs incurred by Consultant in preparing or submitting quotes are the Consultant's sole responsibility; the State of North Carolina will not reimburse any Consultant for any costs incurred prior to award.
4. **DEFAULT:** If, through any cause, Consultant shall fail to fulfill in timely and proper manner the obligations under this agreement, the State shall have the right to terminate this contract by giving written notice to the Consultant and specifying the effective date thereof.

Upon the Consultant filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Consultant, the State may immediately terminate, for cause, this Contract.

Upon termination by the State for Consultant's inadequate performance or bankruptcy, the State may terminate all other existing Contracts the Consultant has with the State, and debar the Consultant from doing future business with the State.

5. **SOURCE AND AVAILABILITY OF FUNDS:** Consultant invoices for services under this Contract shall be sent to the Administrative Officer of the Public Staff. The Public Staff will forward the invoices to the utility responsible for payment, and payment will be made from the utility to the Consultant. Otherwise, any and all payments to the Consultant are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
6. **SITUS:** The place of this Contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in Contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
7. **GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules.
8. **AFFIRMATIVE ACTION:** The Consultant will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.

9. **INTELLECTUAL PROPERTY INDEMNITY**: Consultant shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material, patented or unpatented invention, articles, device or appliance delivered in connection with this contract.
10. **ADVERTISING**: Consultant agrees not to use the existence of this Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or services. A Consultant may inquire whether the State is willing to act as a reference by providing factual information directly to other prospective customers.
11. **ACCESS TO PERSONS AND RECORDS**: During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records related to this Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G. S. §143-49(9).
12. **ASSIGNMENT**: No assignment of the Consultant's obligations or the Consultant's right to receive payment hereunder shall be permitted.

However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Consultant, the State may:

- a. Forward the Consultant's payment check directly to any person or entity designated by the Consultant, and
- b. Include any person or entity designated by Consultant as a joint payee on the Consultant's payment check.

In no event shall such approval and action obligate the State to anyone other than the Consultant and the Consultant shall remain responsible for fulfillment of all Contract obligations. Upon advance written request, the State may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Consultant's assets. Any purported assignment made in violation of this provision shall be void and a material breach of this Contract.

13. **GENERAL INDEMNITY**: The Consultant shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Consultant in the performance of this Contract and that are attributable to the negligence or intentionally tortious acts of the Consultant provided that the Consultant is notified in writing within 30 days that the State has knowledge of such claims. The Consultant represents and

warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Consultant goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this Contract.

18. COMPLIANCE WITH LAWS: Consultant shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and performance in accordance with this contract, including those of federal, state, and local agencies having jurisdiction and/or authority.

19. ENTIRE AGREEMENT: This RFQ and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFQ, any Addenda hereto, and the Consultant's quotes are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.