

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. G-9, SUB 728  
DOCKET NO. SP-13243, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. G-9, SUB 728	)	
	)	
In the Matter of	)	
Application of GESS International North	)	
Carolina, Inc., for Approval to Participate in	)	ORDER REQUESTING
Alternative Gas Pilot Program and for Approval	)	ADDITIONAL INFORMATION
of Receipt Agreements	)	AND COMMENTS
	)	
DOCKET NO. SP-13243, SUB 0	)	
	)	
In the Matter of	)	
Application of GESS International North	)	
Carolina, Inc., for Declaratory Rulings	)	

BY THE CHAIR: On June 19, 2018, in Docket No. G-9, Sub 698, the Commission issued an Order Approving Appendix F and Establishing Pilot Program (Appendix F Order). In summary, the Appendix F Order approved a three-year pilot program to implement Appendix F to the Service Regulations of Piedmont Natural Gas Company, Inc. (Piedmont). Appendix F sets guidelines for Piedmont's receipt of renewable gas for delivery and redelivery on Piedmont's distribution system. With regard to participants in the pilot program, the Appendix F Order stated that renewable gas suppliers could participate in the pilot program if they were able demonstrate to the Commission that their participation would be useful in gathering information and data sought by the Commission. Appendix F Order, at 5.

The Commission has approved participation in the Appendix F pilot program by several renewable gas suppliers, including GESS International North Carolina, Inc. (GESS NC). On August 30, 2018, in Docket No. G-9, Sub 728, GESS NC filed an application requesting to participate in the pilot program. In summary, the application described GESS NC's plan for producing renewable gas at five anaerobic digestion facilities located in five North Carolina counties.

Also on August 30, 2018, in Docket No. SP-13243, Sub 0, GESS NC filed an application requesting declaratory rulings on several aspects of its proposed renewable gas operations.

On September 6, 2018, in Docket No. G-9, Sub 728, Piedmont filed a Statement of Position. According to Piedmont, its Statement was filed in order to clarify a number of

the assertions contained in GESS NC's application for participation in the Appendix F pilot program. In summary, Piedmont stated that it had not made a determination of specific injection sites for GESS NC's renewable gas, and that it had not had extensive contract negotiations with GESS NC about an interconnect agreement.

Subsequent to Piedmont's filing, counsel for GESS NC contacted Commission Staff and requested that the Commission take no action on GESS NC's applications in Docket Nos. G-9, Sub 728 and SP-13243, Sub 0 (GESS dockets), until GESS NC could engage in further discussions with Piedmont and file supplemental information.

On January 2, 2019, GESS NC filed a document entitled First Supplemental and Amended Application of GESS International North Carolina, Inc. (First Amended Pilot Application), in Docket No. G-9, Sub 728. The First Amended Pilot Application stated that it "amends and replaces completely the original Application of GESS in this Docket to address concerns raised by Piedmont." First Amended Pilot Application, at 1. GESS NC requested that the Commission expeditiously approve GESS NC's participation in the Appendix F pilot program, conditioned upon Commission approval of interconnect agreements to be negotiated and filed later by GESS NC and Piedmont.

GESS NC's First Amended Pilot Application described its plan to construct five anaerobic digestion facilities located in five counties – Bladen, Columbus, Robeson, Union and Wilson. GESS NC stated that it had obtained lease agreements for 15 years, with three optional 5-year extensions, for each of the five digester sites. Further, GESS NC stated that it expected the time from commencement of construction to full renewable gas production for each facility to be approximately sixteen months or less.

In addition, GESS NC stated that the renewable gas produced by its anaerobic digestion facilities will be predominantly swine-based biogas, that GESS NC's affiliates will handle all manure pick-up and delivery from its waste sources, and that at full production each facility is projected to produce enough renewable gas to fill four tanker trucks per day, containing roughly 1400 Mcf of scrubbed, cleaned and pressurized swine-based biogas. In addition, GESS NC referenced a "green" biogas feed stock that will be delivered to its facilities by participating farmers. GESS NC further stated that it plans to sell and deliver a portion of the renewable gas and its environmental attributes to Duke Energy Carolinas, LLC (DEC) for DEC and as an agent on behalf of Duke Energy Progress, LLC (DEP). According to GESS NC, it informed DEC and DEP of its intent to file the First Amended Pilot Application, that it provided them a copy of the application, and that it had received no objection from them.

With respect to interconnection with Piedmont's pipeline, GESS NC stated that its anaerobic digestion facilities will not be physically interconnected to Piedmont's pipeline, or the pipeline of any other operator. GESS NC stated that it has applied for receipt agreements with Piedmont for three injection points, including one injection point in Bladen County for the GESS NC facilities in Bladen, Columbus and Robeson counties, one injection point in Union County, and one injection point in Wilson County. GESS NC stated that Piedmont provided it with boundary maps to assist GESS NC in identifying the three proposed injection sites, and it attached the boundary maps as exhibits to its First Amended Application. GESS NC stated that it had provided Piedmont with proposed

injection sites to be located within the boundaries identified on the boundary maps provided by Piedmont. Moreover, GESS NC stated that it informed Piedmont of its intent to file the First Amended Pilot Application and provided Piedmont a copy of the application, but that it had not received a response from Piedmont. Finally, GESS NC stated several reasons why its participation in the Appendix F pilot program would provide Piedmont and the Commission with useful data and information, and would serve the public interest.

On January 28, 2019, the Public Staff filed a letter stating that it had reviewed GESS NC's First Amended Pilot Application and Piedmont's Statement of Position, and that it had no objection to GESS NC's participation in the Appendix F pilot program, subject to the Commission's approval of a receipt interconnect agreement between GESS NC and Piedmont.

On January 31, 2019, the Commission issued an Order Requesting Additional Information that required GESS NC to provide information about its First Amended Pilot Application in response to 15 questions. On March 1, 2019, GESS NC and Piedmont filed responses to the Order Requesting Additional Information.

On March 1, 2019, in Docket No. SP-13243, Sub 0, GESS NC filed a document entitled Supplemental and Amended Requests for Declaratory Rulings (First Amended Declaratory Application), amending its requests for declaratory rulings on several aspects of its proposed renewable gas operations. The First Amended Declaratory Application stated that it "supplements with updated information and amends and replaces completely the original Requests for Declaratory Rulings filed in this Docket to address concerns raised by Piedmont regarding the original Petition and a contemporaneous Application filed by GESS in this Commission's Docket G-9, Sub 728. First Amended Declaratory Application, at 1.

On March 11, 2019, the Commission issued an Order in Docket No. G-9, Sub 728 approving GESS NC's participation in the Appendix F pilot program with several conditions (Pilot Participation Order).

On February 15, 2021, GESS NC and GESS RNG Biogas USA, LLC ( GESS RNG, collectively GESS), filed a Motion to Amend Order Approving Participation in Pilot Program with Conditions in Docket No. G-9, Sub 728 (Second Amended Pilot Application). In summary, GESS stated that GESS RNG is the successor in interest to GESS NC, that GESS NC assigned and transferred all of its rights and interests in the GESS dockets to GESS RNG effective prior to the date of GESS's filing, and that GESS RNG has the rights and interests of GESS NC in the GESS dockets and orders. In addition, GESS stated that it has added seven anaerobic digestion facilities to the original five that it is planning to build, and GESS requested that the Commission amend the Pilot Participation Order to (1) include GESS RNG in the Appendix F pilot program, and (2) to include the additional seven anaerobic digestion facilities in the pilot program.

On February 16, 2021, GESS RNG filed a Second Supplemental and Amended Request for Declaratory Ruling (Second Amended Declaratory Application) in the GESS dockets. GESS RNG stated that the filing "is to supplement and amend the [First

Amended Declaratory Application] filed in Docket No. SP-13243, Sub 0 on March 1, 2019.” Second Amended Declaratory Application, at 1. GESS RNG further stated that GESS RNG is successor in interest to GESS NC, that GESS NC joins in the filing, and that effective prior to the date of the filing GESS NC assigned and transferred all of its rights and interests in the GESS dockets to GESS RNG. In essence, the Second Amended Declaratory Application added the seven additional anaerobic digestion facilities described in the Second Amended Pilot Application, and requested declaratory rulings on several aspects of GESS's renewable gas operations on behalf of GESS RNG.

On February 17, 2021, DEC and DEP (Duke utilities), filed a letter in the GESS dockets. The Duke utilities stated that the purpose of the letter was to advise the Commission that certain statements contained in GESS's Second Amended Declaratory Application are inaccurate and require clarification. The Duke utilities stated that in November 2019 DEC terminated two DEC contracts with GESS NC due to GESS NC's failure to meet contract assurances. According to the Duke utilities, the two contracts were part of GESS NC's approved pilot program projects in Wilson and Union Counties, and GESS NC, or its successor in interest GESS RNG, owes DEC substantial monetary damages from the two failed projects. In addition, the Duke utilities stated that there has been no communication from GESS NC or GESS RNG to DEC since November 2019, that DEC has not been contacted by GESS RNG regarding any purchase by DEC of renewable gas, and that DEC and DEP are not likely to use the GESS RNG renewable gas since the prior contracts with GESS NC have been terminated due to failure to perform, and contracts with other reliable developers have been secured to help meet DEC's and DEP's animal waste compliance goals. The Duke utilities contended that prior to the Commission ruling on GESS RNG's Second Amended Declaratory Application that GESS RNG should be required to bring current the past due accounts for the Wilson and Union County contracts to deliver biogas to the Duke utilities.

On March 12, 2021, Piedmont filed a letter in Docket No. G-9, Sub 728 in reference to the Duke utilities' letter. Piedmont stated that in light of the fact that the Duke utilities are not likely to use renewable gas from GESS RNG due to prior contracts with GESS NC having been terminated, and even though Piedmont takes no position on the underlying merits of GESS RNG's filings, Piedmont noted that Appendix F requires that all renewable gas delivered to Piedmont be nominated for use by and allocated to a Piedmont customer. Further, Piedmont opined that if DEC and DEP are not GESS RNG's customers, then the current record may not be sufficient to support Piedmont's receipt of renewable gas from GESS RNG's renewable gas facilities.

### **Request for Additional Information from GESS**

Based on the foregoing and the record in these dockets, the Chair finds good cause to require GESS to provide additional information about its Second Amended Pilot Application and Second Amended Declaratory Application. As a result, on or before May 10, 2021, GESS shall file verified responses to the following requests for information.

1. State the names of all persons and entities (collectively persons) having a membership, equity and/or ownership interest in GESS NC.
2. State the names of all persons having a membership, equity and/or

ownership interest in GESS RNG.

3. State the names of all persons having a membership, equity and/or ownership interest in both GESS NC and GESS RNG.

4. State whether GESS NC is currently authorized to conduct business in North Carolina, and the date on which such authorization was obtained.

5. State whether GESS RNG is currently authorized to conduct business in North Carolina, and the date on which such authorization was obtained.

6. State whether all assets of GESS NC have been transferred to GESS RNG and the date on which such transfer of assets occurred.

7. State whether GESS RNG has assumed all debts and contract obligations of GESS NC and the date on which such assumption of debts and contract obligations occurred.

8. State the reason(s) why GESS RNG is requesting to be substituted for GESS NC as a participant in the Appendix F pilot program.

9. Provide the details of GESS's plans for selling that portion of its renewable gas that is not sold to DEC or DEP, including:

- (a) The name(s) of the buyers.
- (b) The facilities to be used in delivering renewable gas to the buyer(s).
- (c) Whether the buyer(s) will be end users of the renewable gas, or will re-sell it to another entity.
- (d) The manner in which the price of the renewable gas will be determined.

10. State GESS's position in response to the allegations of the Duke utilities in their letter filed herein on February 17, 2021.

11. Describe any efforts, or planned efforts, by GESS to resolve the Duke utilities' allegations.

12. State GESS's position in response to Piedmont's position that if DEC and DEP are not GESS's customers, then the current record may not be sufficient to support Piedmont's receipt of renewable gas from GESS's renewable gas facilities.

### **Request for Comments**

Based on the foregoing and the record in these dockets, the Chair finds good cause to require the Public Staff and Piedmont, and any other parties desiring to do so, to file comments on GESS's Second Amended Pilot Application and Second Amended Declaratory Application on or before June 11, 2021. Further, the Chair finds good cause to require GESS, the Public Staff and Piedmont, and any other parties desiring to do so, to file reply comments on or before June 28, 2021.

IT IS, THEREFORE, ORDERED as follows:

1. That on or before May 10, 2021, GESS shall file verified responses to the Commission's request for additional information;
2. That on or before June 11, 2021, the Public Staff and Piedmont, and other parties desiring to do so, shall file comments on GESS's Second Amended Pilot Application and Second Amended Declaratory Application;
3. That on or before June 28, 2021, GESS, the Public Staff and Piedmont, and other parties desiring to do so, shall file reply comments; and
4. That a copy of this Order shall be served by electronic service on counsel for Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of April, 2021.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Joann R. Snyder", is written over a light gray circular stamp.

Joann R. Snyder, Deputy Clerk