

August 1, 2023

VIA Electronic Filing

Ms. A. Shonta Dunston, Chief Clerk
North Carolina Utilities Commission
Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27603

Re: ***Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's
Response to CIGFUR's Request for Procedural Relief***
Docket Nos. E-2, Sub 1314; E-7, Sub 1289; E-2, Sub 1315; E-7, Sub 1288

Dear Ms. Dunston:

Enclosed for filing in the above-referenced proceedings on behalf of Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP" and together with DEC, the "Companies") is their *Response to CIGFUR's Request for Procedural Relief*.

Thank you for your assistance with this matter. Feel free to contact me should you have any questions.

Very truly yours,

/s/ Nick A. Dantonio

NAD/sbc
Enclosure

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1314
DOCKET NO. E-7, SUB 1289
DOCKET NO. E-2, SUB 1315
DOCKET NO. E-7, SUB 1288

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of)	
Duke Energy Progress, LLC, and)	
Duke Energy Carolinas, LLC,)	
Requesting Approval of Green)	DUKE ENERGY CAROLINAS,
Source Advantage Choice Program)	LLC’S AND DUKE ENERGY
and Rider GSAC)	PROGRESS, LLC’S RESPONSE
)	TO CIGFUR’S REQUEST FOR
In the Matter of Petition of)	PROCEDURAL RELIEF
Duke Energy Progress, LLC, and)	
Duke Energy Carolinas, LLC,)	
Requesting Approval of Clean)	
Energy Impact Program)	

NOW COME Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, “Duke Energy” or the “Companies”) and hereby respectfully file this Response to the Request for Procedural Relief filed by the Carolina Industrial Group for Fair Utility Rates II and III (collectively, “CIGFUR”) in Docket Nos. E-2, Sub 1314 and E-7, Sub 1289 (“GSA Choice Dockets”) on June 23, 2023 and the Public Staff’s similar request with respect to Docket Nos. E-2, Sub 1315 and E-7, Sub 1288 (“CEI Dockets”).

In support of this Response, the Companies show the Commission the following:

Procedural Background

1. On January 27, 2023, the Companies filed their Joint Petition for Approval of the proposed Green Source Advantage Choice Program in Docket Nos. E-2, Sub 1314 and E-7, Sub 1289 (“Petition for Approval of GSA Choice”) and their Joint Petition for Approval of the proposed Clean Energy Impact Program in Docket Nos. E-2, Sub 1315 and E-7, Sub 1288 (“Petition for Approval of CEI” and together the “Petitions”).

2. On February 9, 2023, the Commission issued an Order Requesting Comments in both the GSAC and CEI Dockets. The Orders directed that on or before March 28, 2023, the Public Staff and Intervenors may file initial comments regarding the Companies’ Petitions and that on or before April 11, 2023, all parties may file reply comments regarding the Companies’ Petitions.

3. On March 24, 2023, the Public Staff filed a Motion for Extension of Time to file initial comments on the Petitions.

4. In its March 28, 2023 Orders Granting Extensions, the Commission granted the Public Staff’s Motions and ordered the Parties to file initial comments on the Companies’ Petitions on or before April 25, 2023 and reply comments on or before May 16, 2023.

5. The Public Staff, North Carolina Attorney General’s Office (“AGO”), the North Carolina Sustainable Energy Association (“NCSEA”), “CIGFUR”, the Carolina Utility Customers Association (“CUCA”), the Southern Alliance for Clean Energy (“SACE”), the Clean Energy Buyers Association (“CEBA”), Google LLC (“Google”), the Carolinas Clean Energy Business Association (“CCEBA”), and the United States Department of Defense and all other Federal Executive Agencies (“DOD”) intervened

(collectively, the “Intervenors”) in the above-captioned GSA Choice dockets and filed initial comments on April 25, 2023.

6. The Public Staff, AGO, NCSEA, SACE, and CCEBA intervened in the above-captioned CEI dockets and filed initial comments on April 25, 2023.

7. On May 3, 2023, the Companies filed Motions for Extension of Time to File Reply Comments. The Commission granted the Companies’ Motions on May 12, 2023, extending the deadline to file reply comments to June 15, 2023.

8. On June 9, 2023, the Companies filed Second Motions for Extension of Time to File Reply Comments. The Commission granted the Companies’ Motions on June 14, 2023, extending the deadline to file reply comments to June 23, 2023.

9. The Companies, Public Staff, AGO, NCSEA, CIGFUR, CUCA, SACE, CEBA, Google, CCEBA, and DOD filed their reply comments in the GSA Choice Dockets on June 23, 2023.

10. The Companies, Public Staff, AGO, NCSEA, SACE, and CCEBA filed their reply comments in the CEI Dockets on June 23, 2023.

11. In its Reply Comments on the Petition for Approval of GSA Choice, CIGFUR requested that the Commission temporarily stay these dockets for a yet-to-be-defined period to allow the parties to continue engagement efforts designed to reach consensus on outstanding issues. CIGFUR signaled that the primary outstanding issue in need of further discussion was the concept of “additionality” or “regulatory surplus,”¹ which was thoroughly discussed in the parties’ Initial and Reply Comments.

¹ CIGFUR Reply Comments at 2 (“In particular, one significant outstanding issue is the additionality or ‘regulatory surplus’ issue raised by environmental advocates and the Public Staff.”).

12. CIGFUR's request for procedural relief did not apply to the Petition for Approval of CEI currently pending before the Commission.² However, the Public Staff requested the Commission apply the same procedural relief to the CEI Dockets.³

Response to Request for Procedural Relief

13. The Companies partially object to CIGFUR's Request. Instead of staying the GSA Choice dockets in their entirety, the Companies recommend that the Commission approve the GSAC CEEA Purchase Track with a total program capacity of 4,000 MW as initially proposed by the Companies and as recommended by the Public Staff in its Reply Comments.^{4,5} The Companies recommend the Commission grant the requested stay only to the extent necessary for the parties to discuss the Companies' proposed GSAC Power Purchase Agreement Track ("PPA Track") and the Public Staff's proposed GSAC Request for Proposals Track ("RFP Track" and, together with the PPA Track, the "Regulatory Surplus Tracks") only.

14. In support of the Companies' position, the Companies believe that the CEEA Purchase Track is now ripe for Commission review and decision. As noted above, the primary issue CIGFUR is requesting additional time to discuss is "regulatory surplus". Further dialogue and engagement on regulatory surplus will necessarily focus on the

² *Id.* at 3.

³ Public Staff Reply Comments at 13.

⁴ Public Staff Reply Comments at 9.

⁵ In its Reply Comments, the Public Staff recommends approval of the CEEA Purchase Track subject to the modification it recommended in Paragraph 41 of its Initial Comments. That recommended modification is to require the Companies to include a disclaimer in the program's marketing materials and tariffs indicating that the CEEAs procured through the GSA Choice Program are not certified by any third party and do not represent additional renewable energy procured above and beyond what is required to comply with HB 951. The Companies have agreed to this recommendation. *See* the Companies' GSA Choice Reply Comments at 46.

Regulatory Surplus Tracks. The Companies agree that a stay and further stakeholder engagement regarding the Regulatory Surplus Tracks is appropriate. Further discussion about regulatory surplus is not relevant to the GSAC CEEA Purchase Track. In fact, the intervenors did not raise issues specifically applicable to the GSAC CEEA Purchase Track, which suggests this track is ready for Commission review and decision. Accordingly, the Companies do not agree that a stay and further stakeholder engagement regarding the GSAC CEEA Purchase Track or the CEI Program is appropriate.⁶

15. The Companies do not have an objection to CIGFUR's request for a temporary stay to the extent it applies to a Commission decision on the Regulatory Surplus Tracks. However, the Companies have already provided a detailed explanation of why, due to the statutory boundaries set by House Bill 951, it is challenging for any amount of additional discussions to result in the Companies being able to provide the regulatory surplus some intervenors argued for in their initial and reply comments. Nevertheless, the Companies are willing to engage in good faith with the Public Staff and Intervenors in an attempt to continue to refine the GSA Choice Program within the statutory boundaries set by House Bill 951.

16. Based on discussions with the Public Staff and CIGFUR, the Companies believe that a temporary stay of the Regulatory Surplus Tracks through October 2023 is prudent to allow for the Public Staff and other interested parties sufficient time for "further discussion amongst the parties regarding potential program modifications and for discussions, potentially with the Center for Resource Solutions and the Science Based

⁶ As explained in their Reply Comments, the Companies have included language in the proposed tariffs for both programs that makes clear that the CEEAs purchased do not contribute to regulatory surplus.

Targets initiative to evaluate whether program modifications that result in resource acceleration”⁷ could result in regulatory surplus. The Companies therefore request that the Commission allow for any party to file an update on their discussions with respect to the Regulatory Surplus Tracks on November 15, 2023.

17. Finally, if the Commission grants a temporary stay of the Regulatory Surplus Tracks, the Companies note that the Commission-approved Green Source Advantage Bridge Program still has capacity available for interested customers to negotiate prices, rates, and contract term directly with a selected renewable developer. This option under the Green Source Advantage Bridge Program provides customers with an option to negotiate with developers and enter into a PPA with the third parties.

18. For the reasons set forth above, the Companies request the Commission (1) approve the GSAC CEEA Purchase Track with a total program capacity of 4,000 MW as described above,⁸ (2) issue an Order on the Companies’ Petition for Approval of the CEI Program pending in Docket Nos. E-2, Sub 1315 and E-7, Sub 1288 and decline to stay its decision prior to ruling on the Petition and comments on the same, and (3) allow interested parties to file an update regarding discussions on the Regulatory Surplus Tracks on November 15, 2023. The Companies have conferred with counsel for the parties in these dockets and the Public Staff and CIGFUR indicated that they support this request, without waiving any positions taken in their respective initial and/or reply comments. CCEBA, CEBA, AGO, CUCA, and Google indicated that they take no position on this request, but reserve the right to file a separate response. SACE and NCSEA indicated that they do not

⁷ Public Staff Reply Comments at 13.

⁸ If the Commission approves this request, the Companies will file updated tariffs to exclude language regarding the PPA Track.

oppose (2) as described, but they oppose the remainder of the request and reserve the right to file a separate response.

Respectfully submitted, this the 1st of August 2023.

/s/ Nick A. Dantonio
E. Brett Breitschwerdt
Nicholas A. Dantonio
Mason E Maney
McGuireWoods LLP
501 Fayetteville Street, Ste.
500 PO Box 27507 (27611)
Raleigh, North Carolina 27601
EBB Telephone: (919) 755-6563
NAD Telephone: (919) 755-6606
MEM Telephone: (919) 835-5958
bbreitschwerdt@mcguirewoods.com
ndantonio@mcguirewoods.com
mmaney@mcguirewoods.com

*Attorneys for Duke Energy Carolinas, LLC
And Duke Energy Progress, LLC*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to CIGFUR's Request for Procedural Relief filed in Docket Nos. E-2, Sub 1314; E-7, Sub 1289; E-2, Sub 1315; and E-7, Sub 1288 was served electronically or via U.S. mail, first class postage prepaid, upon all parties of records.

This 1st day of August, 2023.

/s/Nick A. Dantonio

Nicholas A. Dantonio

McGUIREWOODS LLP

501 Fayetteville Street, Suite 500

Raleigh, North Carolina 27601

Telephone: (919) 755-6605

Fax: (919) 755-6699

ndantonio@mcguirewoods.com

*Attorney for Duke Energy Carolinas, LLC
and Duke Energy Progress, LLC*