

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, Sub 1314 )  
DOCKET NO. E-7, Sub 1289 )

In the Matter of: )  
Petition of Duke Energy )  
Progress, LLC, and Duke Energy )  
Carolinas, LLC, Requesting )  
Approval of Green Source )  
Advantage Choice Program and )  
Rider GSAC )

**JOINT REPLY COMMENTS OF THE  
SOUTHERN ALLIANCE FOR  
CLEAN ENERGY AND THE NORTH  
CAROLINA SUSTAINABLE  
ENERGY ASSOCIATION**

DOCKET NO. E-2, Sub 1315 )  
DOCKET NO. E-7, Sub 1288 )

In the Matter of: )  
Petition of Duke Energy )  
Progress, LLC, and Duke Energy )  
Carolinas, LLC, Requesting )  
Approval of Clean Energy Impact )  
Program )

PURSUANT TO the North Carolina Utilities Commission’s (Commission) February 9, 2023 *Order Requesting Comments*, its March 28 *Order Granting Extension*, its May 12 *Order Granting Extension*, and its June 14 *Order Granting Second Extension*, each filed in substantially the same form in each of the above-captioned dockets, the Southern Alliance for Clean Energy (SACE) and the North Carolina Sustainable Energy Association (NCSEA) submit the following Joint Reply Comments. These Joint Reply Comments build on the Joint Initial Comments of Southern Alliance for Clean Energy, North Carolina Sustainable Energy Association, and Carolinas Clean Energy Business Association (Joint Initial Comments) filed on April 25 in the of the above-captioned dockets.

## 1. Lack of Regulatory Surplus is a Shared Concern

Multiple parties in the proceedings for both the proposed Green Source Advantage Choice (GSAC) and Clean Energy Impact (CEI) programs raised the same central concern discussed at length in the Joint Initial Comments: as proposed, the GSAC and CEI programs will not result in new, additional renewable energy resources coming online, above and beyond the baseline procurement required by law and regulation—renewables that are “surplus” to regulatory requirements (“regulatory surplus” or sometimes “additionality”). Importantly, multiple parties who took this position represent the interests of customers who might participate in the proposed programs.

The Public Staff clearly identified major problems with the lack of “regulatory surplus” in Duke’s proposed GSAC and CEI programs in its comments on both programs. In its comments on the proposed GSAC program, the Public Staff stated that it attended stakeholder meetings prior to filing and “was left with the impression that large commercial and industrial customers voluntarily paying a premium price for renewable energy generally want that renewable energy to be additional to what the Companies are already planning to procure.” Initial Comments of the Public Staff [on GSAC] 10. Accordingly, since the programs would not be surplus to regulatory requirements—and GSAC “appears designed to prevent the procurement of additional renewable energy”—the Public Staff expressed concern that the programs would succeed. *Id.* at 11 (emphasis original). Further, the Public Staff warned that the lack of regulatory

surplus could open the GSAC “program and its participants up to claims of ‘greenwashing.’” *Id.* at 14. It recommended Duke’s petition be denied.

The Public Staff raised similar concerns about the proposed CEI program, but, likely because the program is intended to serve residential (and small commercial) customers, it focused more on the potential for customer confusion resulting from the lack of regulatory surplus. The Public Staff found that, based on Duke’s filing, “a customer would reasonably assume that the CEI Program, as designed, supports renewable energy and reduces carbon emissions,” although that is not the case. Public Staff’s Comments [on CEI] 8. It recommended Duke’s petition be denied.

The Attorney General’s Office (AGO) expressed even greater concern about customer perceptions in its combined comments on GSAC and CEI, stating that, as designed, the programs have the “potential to mislead customers into thinking that they are supporting the addition of renewable resources to the Companies’ systems when they are not.” Comments of the Attorney General’s Office [on GSAC and CEI] 4. The AGO identified additional concerns regarding double-counting, compliance with Federal Trade Commission guidelines, a prior Commission order, and Securities Exchange Commission proposed rules, *id.* at 4-8, all of which echo and emphasize the concerns raised in the Joint Initial Comments. It recommended Duke’s petitions be denied.

Large customers raised concerns about issues related to regulatory surplus as well. The Clean Energy Buyers Association (CEBA) recommended that the Commission modify Duke’s GSAC petition in order to prohibit Duke from

duplicative counting of emissions credits from the program, which CEBA explained is inconsistent with the legislative intent of H951. Initial Comments of Clean Energy Buyers Association [on GSAC] 5-6. CEBA warned that “counting the same energy attribute certificate for both [Duke’s and buyers’] purposes would restrict the customers that would subscribe to this program because they would be unable to count this clean energy towards their clean energy goals.” *Id.* at 5. With duplicative counting, the GSAC program would be “little more than a certificate.” *Id.* at 6.

Other large customers reinforced the concern that they would be unable to make use of the proposed programs. Google LLC stated that it is “critical” to ensure that the GSAC program “incentivizes investment that is above-and-beyond Duke’s business as usual and serves to accelerate efficiencies in the pathway to decarbonization.” Initial Comments of Google LLC [on GSAC] 8 n.13. And the Carolina Utility Customers Association, Inc. (CUCA) pointed out that Duke’s proposed GSAC program “raises issues of regulatory surplus and ESG accounting,” as well as “a double counting issue: If the program’s environmental attributes are being counted by Duke towards its own compliance efforts, then it is unclear whether participating customers will also be able to count these attributes for purposes of their own ESG goals.” Initial Comments of CUCA [on GSAC] 4.

Because Duke’s proposed GSAC and CEI programs would not provide regulatory surplus, and therefore would cause multiple problems as identified in

Joint Initial Comments and reinforced by other parties, the Commission should deny Duke's petitions.

## 2. There Are Multiple Potential Solutions

There are multiple ways to construct voluntary customer programs that would result in additional clean energy surplus to the requirements of H951.

The Public Staff proposed separate solutions for GSAC and CEI. For GSAC, the Public Staff essentially proposed simply to adjust the next procurement of clean energy up by the same amount as the capacity of clean energy procured through GSAC in the prior year. Initial Comments of the Public Staff [on GSAC] 16. Recognizing that Duke has claimed that its anticipated future interconnection limits preclude regulatory surplus (and other clean-energy procurement), the Public Staff very rightly stated that the interconnection limits that Duke used for its proposed Carbon Plan cannot justify the lack of regulatory surplus in its proposed customer programs. *Id.* at 15. For CEI, the Public Staff proposed expanding the existing Renewable Advantage program to provide an option to purchase exclusively in-state RECs that include a carbon credit purchase option. Public Staff's Comments [on CEI] 9.

The Public Staff's thoughtful proposed solutions, in addition to the many offered in the Joint Initial Comments, support the request in the Joint Initial Comments to direct Duke to engage with stakeholders concerning workable customer programs that provide regulatory surplus and possibly to test them as pilots through rapid prototyping. Joint Initial Comments 14-19. The Joint Initial Comments contain proposed solutions that all address Duke's interconnection

concerns, either by improving interconnection (proactively addressing interconnection challenges, using revised large-generator interconnection procedures, allowing customers to cover incremental upgrade costs) or by adding clean energy in a way that does not implicate interconnection concerns (relying on storage, using small and rooftop facilities).

SACE and NCSEA would welcome the opportunity to engage with Duke and other stakeholders to consider this collection of potential solutions and develop workable regulatory-surplus customer programs to present to the Commission.

### 3. Conclusion

Thank you for considering these Reply Comments.

Respectfully submitted this 23rd day of June, 2023.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing filing of the Southern Alliance for Clean Energy and the North Carolina Sustainable Energy Association as filed today in Docket Nos. E-2, Sub 1314; E-7, Sub 1289; E-2, Sub 1315; and E-7, Sub 1288, has been served on all parties of record by electronic mail or by deposit in the U.S. Mail, first-class, postage prepaid.

This 23rd day of June, 2023.

/s/ Nick Jimenez