

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 MOTION FOR A
TECHNICAL CONFERENCE 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, Docket Nos. E-2, Sub 1314 and E-7, Sub 1289 (*GSAC Dockets*), and Docket Nos. E-2, Sub 1315 and E-7, Sub 1288 (*CEI Dockets*) (collectively, *GSAC and CEI Dockets*), and Commission Rule R1-7, the Southern Alliance for Clean Energy (SACE) and the North Carolina Sustainable Energy Association (NCSEA) submit the following Motion for a Technical Conference.

1. Background

Pursuant to the Commission's February 9, 2023 *Order Requesting Comments* and subsequent extensions, parties filed initial comments by April 25, 2023 and reply comments by June 23, 2023.

On June 23, the Carolina Industrial Group for Fair Utility Rates II (CIGFUR II) and the Carolina Industrial Group for Fair Utility Rates III (CIGFUR III) (together with CIGFUR II, CIGFUR) filed combined reply comments and a request for procedural relief in the Green Source Advantage Choice (GSAC) dockets (CIGFUR Reply & Procedural Request).

In its June 23 reply comments, the Public Staff requested that the Commission apply any relief that it granted to CIGFUR in the GSAC dockets to the Clean Energy Impact (CEI) dockets as well.

On August 1, Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC's (DEP) (collectively, Duke) filed a response to CIGFUR's procedural motion (Duke Response & Procedural Request). Duke made a series of different requests for relief. Beginning with the GSAC dockets, Duke first requested the Commission simply approve the GSAC "Clean Energy and Environmental Attribute" (CEEA) Purchase Track with a total program capacity of 4,000 MW as it initially proposed, but with the disclaimer recommended by the Public Staff in its reply comments, which Duke agreed to in its reply comments. Second, still with the GSAC dockets, Duke requested the Commission grant CIGFUR's request for a 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). Duke referred to these as the "Regulatory Surplus Tracks." Finally, Duke requested that the Commission decline to stay the CEI dockets and issue an order on Duke's petition for approval of the CEI program.

On August 9, SACE and NCSEA filed a joint response to CIGFUR's procedural motion and to Duke's response to CIGFUR's procedural motion (SACE-NCSEA Joint Response).

On August 11, the Carolinas Clean Energy Business Association (CCEBA) filed a letter in further response to the proposals put forth in the docket and to CIGFUR's procedural motion and to Duke's response to CIGFUR's procedural motion.

On August 28, Duke filed comments styled as a supplemental reply letter, replying to the SACE-NCSEA Joint Response and CCEBA's August 11 letter, both of which responded to Duke's Response & Procedural Request, which responded to CIGFUR's Reply & Procedural Request (Duke Supplemental Reply Letter).

2. A Commission-directed technical conference would help the Commission to resolve the central issue in this proceeding.

The central issue in this proceeding is whether the voluntary customer programs that the Commission ultimately approves under House Bill 951 (H951) will result in procuring any clean energy above and beyond Duke's business-as-usual procurement levels. See Duke Supplemental Reply Letter 4 (not disputing that regulatory surplus is the central issue).

The Commission applies a “good cause” standard when deciding whether to hold a technical conference. Order Postponing Tranche 2 CPRE RFP Solicitation and Scheduling Technical Conference 1, *In the Matter of Joint Petition of Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, for Approval of Competitive Procurement of Renewable Energy Program*, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 (N.C.U.C. May 1, 2019) [Order on CPRE Technical Conference]. The Commission will hold a technical conference when it will help the Commission to hear about an issue and have the opportunity to ask questions and explore an issue raised in the proceeding. Order Scheduling Technical Conference and Requiring Filing of Report 1-2, *In the Matter of 2020 Biennial Integrated Resource Plans and Related 2020 REPS Compliance Plans*, Docket No. E-100, Sub 165 (N.C.U.C. Jan. 12, 2021). When there is good cause to do so, the Commission will specify the issue or issues to be addressed at the technical conference. Order on CPRE Technical Conference 1-2.

As explained below, there is good cause to hold a Commission-directed technical conference on the issue of regulatory surplus in this proceeding and doing so would help the Commission to render its decision.

a. Multiple parties support requiring regulatory surplus.

Multiple parties raised the concern that Duke’s proposed GSAC and CEI programs will not procure any clean energy beyond business as usual. In initial comments, these parties included the Public Staff, the Attorney General’s Office (AGO), Clean Energy Buyers Association (CEBA), Google LLC (Google), the Carolina Utility Customers Association (CUCA), and, jointly, SACE, NCSEA, and

CCEBA. See Joint Reply Comments of the Southern Alliance for Clean Energy and the North Carolina Sustainable Energy Association 2-5, *GSAC and CEI Dockets* (N.C.U.C. Jun. 23, 2023) (summarizing initial comments addressing regulatory surplus); Reply Comments of the Public Staff 3-6, *GSAC and CEI Dockets* (N.C.U.C. Jun. 23, 2023).

On reply, the group of parties concerned that Duke’s proposed GSAC and CEI programs will not add clean energy expanded by two.

i. Parties that expressed concern in initial comments about Duke’s proposed lack of regulatory surplus maintained their concern in reply comments.

The same parties that expressed concerns in their initial comments about Duke’s proposed lack of regulatory surplus maintained and expanded on their positions in reply comments. These included SACE & NCSEA, CCEBA, CEBA, Google, and CUCA.¹ The Public Staff maintained the positions taken in its initial comments, although it also recommended approving a non-regulatory surplus option, the GSAC “CEEA Purchase Track,” as discussed below.

As noted, SACE and NCSEA summarized the problem, the discussion of the issue in initial comments by parties who agreed that it is a problem, and potential solutions put forward in the joint initial comments of SACE, NCSEA, and CCEBA, and by others. Joint Reply Comments of the Southern Alliance for Clean Energy and the North Carolina Sustainable Energy Association 2-5, *GSAC and CEI Dockets* (N.C.U.C. Jun. 23, 2023).

¹ The AGO did not file reply comments.

CCEBA submitted a letter in lieu of reply comments, in which it identified Duke’s proposed lack of regulatory surplus as a “common critique” and proposed an alternative solution to the problem. CCEBA Letter in Lieu of Comments, *GSAC and CEI Dockets* (N.C.U.C. June 23, 2023). CCEBA proposed increasing the GSAC “PPA Track” procurement option by 250 MW to a total of 500 MW or more, and requiring Duke *not* to subtract the projects under that program from H951 procurement volumes. *Id.* at 2. CCEBA put the proposed solution forward for further discussion and did not oppose CIGFUR’s proposed stay. *Id.*

CEBA stated that it believes that “the program as filed can lead to participation by some customers and that it is an improvement from some of the previous commercial and industrial customer program offerings from Duke,” but noted that the lack of regulatory surplus “could impact the ability for participating customers to obtain certification for the attributes they purchase from industry-recognized third-party accounting entities.” Reply Comments of Clean Energy Buyers Association, *GSAC Dockets* (N.C.U.C. June 23, 2023). CEBA believed that further consideration and dialogue among interested parties was warranted. *Id.* at 2. And it requested the opportunity to submit sur-reply comments. *Id.*

Google’s reply comments focused on regulatory surplus. Google explained that the “most common comment” submitted by intervenors was that “a critical aspect of the program is that the end result of customer participation—and payment of premium rates for such participation—is that Duke achieve greater reductions in carbon emissions than Duke would achieve in the absence of the program.” Reply Comments of Google LLC, *GSAC Dockets* (N.C.U.C. June 23,

2023). Google summarized critiques made by SACE, NCSEA, and CCEBA in their joint initial comments, as well as those of the AGO, CEBA, and the Public Staff. *Id.* at 2-3. Google reiterated its position that “Duke’s customer programs should be structured to provide carbon reduction benefits above and beyond what Duke would achieve in the absence of the programs.” *Id.* at 3.

Google also supported other intervenors’ calls for a program design that allows greater “flexibility.” *Id.* at 4. In particular, Google supported allowing GSAC participants to claim clean energy capacity from projects not selected by Duke in its annual Carbon Plan-driven procurements. *Id.* Though Google did not explicitly say so in its reply comments, this idea has been discussed among stakeholders as potentially part of a pathway to regulatory surplus: by paying a premium for clean-energy project bids left over after Duke selected the lowest-cost winning bids, participants would be facilitating projects that otherwise would not have been selected that procurement year.²

CUCA reiterated its concern that aspects of Duke’s proposed programs, such as the lack of regulatory surplus and concerns about ESG accounting, could “deter participation.” Reply Comments of CUCA, *GSAC Dockets* (N.C.U.C. June 23, 2023). CUCA summarized the similar concerns raised by other parties, including the Public Staff, the AGO, CEBA, Department of Defense, SACE/NCSEA/CCEBA, Google, and CIGFUR. *Id.* at 2-4. CUCA identified a

² This proposal does leave open to question the duration of the regulatory-surplus clean-energy capacity achieved, whether it last as little as one year or less—if Duke were to subtract the same amount of capacity from the next year’s planned clean-energy procurement, as proposed—or for as long as the life of the facility.

perceived tension between the carbon-reduction requirements in H951 and achieving regulatory surplus and related eligibility for third-party certification. *Id.* at 4. CUCA noted we are at an early stage in decarbonization and third-party certification standards are continuing to evolve, and supported other parties' various proposals to achieve both goals so long as non-participating customers are held harmless. *Id.* at 4-5.

The Public Staff maintained the positions taken in its initial comments. Reply Comments of the Public Staff 7, *GSAC and CEI Dockets* (N.C.U.C. Jun. 23, 2023). This included reiterating its request that the Commission require Duke to increase its annual clean-energy procurements to account for previously subscribed GSAC program capacity. *Id.* at 10.

However, based on the initial comments of intervenors who discussed concerns regarding regulatory surplus and conversations with Duke, the Public Staff also modified the recommendations submitted in its initial comments. Chiefly, whereas in its initial comments the Public Staff recommended "elimination of the CEEA Purchase Track," Initial Comments of the Public Staff 20, *GSAC Dockets* (N.C.U.C. Apr. 25, 2023), it instead recommended approving the GSAC CEEA Purchase Track with a modification requiring Duke to disclose that the CEEAs procured through the GSAC Program are not certified by any third party and do not represent additional renewable energy procured above and beyond what is already required to comply with HB 951, which the Public Staff had identified as an alternative in its initial comments. *Id.* at 9.

The Public Staff newly proposed that the two other GSAC “tracks,” based on customers’ procurement of clean energy through power purchase agreements (PPA Track), or by expanding Duke’s annual clean energy procurement (RFP Track) be designated the “Regulatory Surplus Tracks.” *Id.* at 8. It proposed limiting the Regulatory Surplus Tracks to a combined 1,000 MW, out of 4,000 MW of total program capacity. *Id.* at 9. And it proposed that “Regulatory Surplus Track capacity ‘roll off’ after a period of five years.” *Id.* at 11. By this, the Public Staff meant that Duke would add to the annual Carbon Plan-derived clean energy procurement the total amount of Regulatory Surplus Track capacity that was subscribed within the past five years. *Id.* Stated from the participant’s perspective, purchasing, say, 100 MW of zero-carbon clean energy through one of the Regulatory Surplus Tracks would mean that Duke would procure its Carbon Plan-derived baseline amount of clean energy plus 100 MW for five years, after which Duke would revert to procuring only its baseline level of clean energy. The customer would have “produced regulatory surplus for at least five years.” *Id.*

Finally, the Public Staff noted that the Center for Resource Solutions (CRS), a nonprofit entity that runs the Green-e independent renewable energy certification program, issued a market advisory and policy update for North Carolina stating that Duke-owned renewable energy generators built on or after January 1, 2023 are no longer eligible for Green-e certification. *Id.* at 12. The Public Staff stated that additional time for further discussion, potentially with CRS, would allow parties to discuss whether program modifications allowing “resource acceleration” as proposed by the Public Staff could result in regulatory surplus. *Id.* at 13. The

Public Staff supported CIGFUR's Procedural Request and asked to extend it to the CEI dockets in addition to the GSAC dockets. *Id.* The Public Staff later supported Duke's response to CIGFUR's Reply & Procedural Request.

ii. Additional parties expressed concern about Duke's proposed lack of regulatory surplus.

Two parties, CIGFUR and the federal government, addressed regulatory surplus explicitly for the first time in their reply comments.

CIGFUR filed combined reply comments and a request for procedural relief. Among the four outstanding issues CIGFUR identified as in need of further discussion during its requested stay, two had to do with regulatory surplus. One was "the ability for participating customers to obtain third-party certification of renewable energy attributes; which, when considered together, are essentially the entire value proposition to customers contemplating whether to voluntarily participate in the GSA-C Program." CIGFUR Procedural Request 2. This issue is bound up with the lack of regulatory surplus. As noted, Duke-owned renewable energy generators built on or after January 1, 2023 are no longer eligible for Green-e certification.

The other was regulatory surplus itself, which CIGFUR described as a "significant outstanding issue" and spent the bulk of its discussion of outstanding issues on. *Id.* CIGFUR stated that one reason consensus had not been reached on the issue was that "standards governing renewable energy and carbon offset products for consumers and businesses are fluid and continuously evolving" and "there are multiple third-party organizations applying multiple different certification

standards for green power products in the United States.” Like the Public Staff, CIGFUR noted CRS’s market advisory concerning Green-e eligibility, but noted that CIGFUR believed that CRS could reconsider its position. *Id.* CIGFUR stated that it believed that “several” non-residential customers would very likely be interested in participating in GSAC even if it does not ultimately qualify for third-party certification. *Id.*

Finally, CIGFUR stressed “that we must make every effort on the front end to ensure that the GSA-C Program is designed in a way that will be successful and fully subscribed, even if it takes a bit more time to finalize a program and resolve the current dockets.” *Id.* at 3. It requested a stay for a limited time to continue discussions, as well as the opportunity to file sur-reply comments after the stay expired. *Id.* CIGFUR later supported Duke’s response to CIGFUR’s Reply & Procedural Request.

The United States Department of Defense and all other Federal Executive Agencies (together, Department of Defense) urged the Commission to require Duke to accurately track and account for carbon-free electricity (CFE). The United States Department of Defense and All Other Federal Executive Agencies’ Reply Comments 3-5, *GSAC Dockets* (N.C.U.C. June 23, 2023). And the Department of Defense explicitly agreed “with the Public Staff, CEBA, CUCA, the AGO and [SACE, NCSEA, and CCEBA] that the Commission should address concerns raised about regulatory surplus.” *Id.* at 5.

The Department of Defense explained that it is “vital” that Duke accurately track CFE in order for the Department of Defense to comply with federal Executive

Order No. 14057 (E.O. 14057). *Id.* at 3. The Department of Defense explained that proper accounting is essential because, pursuant to E.O. 14057, the Department of Defense seeks to procure enough CFE that it uses 100% CFE on an annual basis by 2030. *Id.* at 3. But the only way the Department of Defense “can correctly calculate the amount of CFE it has procured is if Duke separates its residual mix serving all customers from the megawatts of CFE purchased by customers through its voluntary programs.” *Id.* at 4. Typically, all electricity “delivered as part of the utility’s default electricity service, including CFE, is paid for by the utility’s rate base,” and that default electricity supply is separate from purchased CFE. *Id.* at 3-4. But the manner in which Duke proposed to account for the CFE procured through its proposed voluntary programs “introduces ambiguity into whether voluntary procurement of CFE is in fact additional and impactful.” *Id.* at 5.

As a solution, the Department of Defense recommended backing the MWs of CFE procured through the GSA Bridge and GSAC programs out of its general mix serving all customers. *Id.* at 4. The Department of Defense requested that the Commission direct Duke to develop clear accounting and reporting to determine the amount of CFE serving all customers, as well as REC ownership. *Id.*

Not an intervenor, the Southeast Sustainability Directors’ Network (SSDN) filed a consumer statement of position urging the Commission to ensure that carbon emission reductions associated with renewable energy projects facilitated by the H951 voluntary customer programs will be attributed solely to the

corresponding program participant and will not be counted towards compliance with the emission reduction requirements of HB951. Comments of North Carolina Local Governments on Duke Energy's Proposed Voluntary Customer Programs, *GSAC and CEI Dockets* (June 23, 2023).

b. The parties have suggested a wide variety of different solutions.

As described above and in initial comments, the parties to these proceedings have offered multiple different proposals for ensuring that the H951 voluntary customer programs ultimately approved by the Commission result in procuring additional new clean energy beyond Duke's business-as-usual levels. To summarize:

In their Joint Initial Comments, SACE, NCSEA, and CCEBA offered the following proposals focused on overcoming Duke's stated interconnection limitations: (1) proactively address interconnection challenges; (2) use of Duke's newly revised large-generator interconnection procedures (LGIP) to fast-track new zero-carbon replacement generation at the sites of fossil generators that have retired or will be retired soon; (3) allow customers to cover incremental upgrade costs, akin to Arizona Public Service Company's (APS) Green Power Partners Program (GPPP) "Green Commit" option; (4) rely on storage to overcome interconnection constraints without waiting for transmission or distribution grid upgrades; (5) avoid interconnection constraints through small and rooftop facilities. Joint Initial Comments of Southern Alliance for Clean Energy, North Carolina

Sustainable Energy Association, and Carolinas Clean Energy Business Association 14-19, *GSAC and CEI Dockets* (N.C.U.C. Apr. 25, 2023).

As discussed above, in reply comments, CCEBA proposed increasing the GSAC “PPA Track” procurement option by 250 MW to a total of 500 MW or more, and requiring Duke not to subtract the projects under that program from H951 procurement volumes.

Google supported allowing GSAC participants to claim clean energy capacity from projects not selected by Duke in its annual Carbon Plan-driven procurements.

CUCA supported other parties’ various proposals to achieve both goals so long as non-participating customers are held harmless.

The Public Staff proposed two “Regulatory Surplus Tracks” based on allowing participating customers to enter PPAs with third parties or to expand Duke’s annual clean-energy procurement, with regulatory surplus “rolling off” after five years.

In addition to the solutions offered, multiple parties noted that the North Carolina grid is at a relatively early stage in decarbonization, and that third-party certification standards continue to evolve.

Duke’s reply comments offered no pathway to achieving regulatory surplus. Instead, Duke merely asserted that the “solution to any concerns from the AGO, Public Staff and others regarding double counting or greenwashing is the appropriate disclosure to customers.” Duke Energy Carolinas, LLC’s and Duke

Energy Progress, LLC's Reply Comments 46, *GSAC Dockets* (N.C.U.C. June 23, 2023).

c. The expertise of neutral third parties would help the Commission to resolve the issues in this proceeding.

The circumstances of these proceedings support holding a technical conference. This is the first time the Commission is faced with developing voluntary customer programs when there are carbon-reduction requirements in state law raising new regulatory surplus concerns; it is new and complex territory. There are multiple competing proposals before the Commission, which would have very different effects on customer participation and the market for voluntary clean energy, while there is unanimity in favor of program success. Multiple parties have stated that third-party certification is important, but also that certification standards evolve. At the same time, these issues have come before utilities commissions throughout the country and the Commission surely could benefit from hearing from experts how they were resolved, and how national stakeholders are resolving the issues. Finally, as multiple parties noted in their reply comments, the Commission is under no statutory deadline to approve or develop voluntary customer programs under H951; it is more important to get the programs right than to authorize Duke to implement flawed programs quickly.

Under these circumstances, there is good cause to hold a Commission-directed technical conference on the issue of regulatory surplus, including proper carbon emissions accounting and carbon-free electricity accounting, to hear from neutral third-party experts on the subject. The expertise of neutral third-party

experts that have focused on these issues in other jurisdictions and even led stakeholder processes to resolve them, could help the Commission to develop successful final H951 voluntary customer programs.

d. Neutral third-party experts have addressed regulatory surplus and related issues.

At least two neutral third-party experts have addressed regulatory surplus and related issues: CRS and the Regulatory Assistance Project (RAP).

The Commission is already aware of CRS' expertise on regulatory surplus and related issues through these proceedings. As noted above, multiple parties commented on CRS' decision that Duke-owned renewable energy generators built on or after January 1, 2023 are no longer eligible for Green-e certification. In addition, on June 27, 2023, CRS submitted a consumer statement of position comment letter in the GSAC and CEI proceedings discussing regulatory surplus in the context of claims about voluntary clean energy. CRS has also published multiple white papers and public education documents concerning regulatory surplus, often in collaboration with the U.S. Environmental Protection Agency (EPA). *E.g.*, Attachment 1, TODD JONES, CRS, ADDITIONALITY AND RENEWABLE ENERGY CERTIFICATES: UNDERSTANDING THE VALUE OF REC CLAIMS (2016), <https://resource-solutions.org/wp-content/uploads/2016/03/RECs-and-Additionality.pdf> (linked in the EPA's explanation of regulatory surplus: <https://www.epa.gov/green-power-markets/regulatory-surplus>); Lucas Grimes, CRS & James Critchfield, EPA Green Power Partnership, *Purchasing Clean*

Energy for Impact: Understanding Opportunities, RESOURCE-SOLUTIONS.ORG, (Sept. 8, 2022), <https://resource-solutions.org/090822/>.

RAP is an independent global nonprofit organization focused on power sector policy innovation, including developing and sharing best practices tailored to local priorities and acting as a trusted advisor in implementation. RAP's expertise would be perfectly suited to presenting to the Commission on regulatory surplus and related issues. In particular, RAP is currently leading a stakeholder working group that is developing principles for emissions tracking in the context of 24/7 Carbon-Free Transition Tariffs, responding to goals adopted by large buyers to supply themselves with carbon-free electricity 24 hours a day, 7 days a week, and the RAP stakeholder group is working through some the same issues that have arisen in this proceeding. Stakeholders include utilities such as Duke and Xcel-Colorado, energy companies such as Dominion Energy, state utility regulators, large buyers such as Google and Nucor, federal agencies such as the U.S. Department of Energy, public interest organizations such as CRS, and trade organizations such as CEBA. Attachment 2, RAP, 24/7 Carbon-Free Energy Transition Tariffs: Stakeholder Process Kickoff Meeting (Apr. 26, 2023). Notably, commenters including CEBA and Google explicitly requested hourly reporting be part of Duke's proposed programs.

There are important similarities between RAP's current effort and the H951 voluntary customer programs. The scope of the issue RAP is addressing includes ensuring that carbon-free resources displace carbon-emitting resources and the effect of a 24/7 carbon-free portfolio on other consumers on the grid. Attachment

3, RAP, 24/7 CARBON-FREE TRANSITION TARIFFS: A REGULATORY TOOL FOR ACCELERATING DECARBONIZATION 4. And as set out in the public draft report, the stakeholder group has preliminarily concluded that one of the eligibility requirements should be fairness to non-participants, which requires retaining a pro-rata share of existing carbon-free generation for non-participating customers. Attachment 4, RAP, 24/7 CARBON-FREE TRANSITION TARIFFS: ELIGIBLE RESOURCES, DATA REQUIREMENTS, AND INFRASTRUCTURE REQUIREMENTS 3-6 (Aug. 19, 2023 Draft). Lessons RAP could share from the 24/7 Carbon-Free Transition Tariffs stakeholder working group process would help the Commission to evaluate Duke's proposals.

CRS and RAP would be excellent neutral third-party experts on regulatory surplus and related issues and their input during a technical conference would help the Commission in its deliberation on the issue. Their national experience on the cutting edge of this issue would help to ensure that the Commission is aware of best practices and the needs of large customers, greatly increasing the chances that the programs will succeed and be fully subscribed.

3. If necessary, the Commission should request supplemental briefing dedicated to regulatory surplus under H951.

The Commission should not hesitate to hold a technical conference for fear that H951 will not allow regulatory surplus. First, Duke itself has not foreclosed the possibility that regulatory surplus is achievable under H951, having proposed in its response to CIGFUR's Reply & Procedural Request to continue discussions with stakeholders on the GSAC "Regulatory Surplus Tracks." Second, Duke's repeated

suggestions that H951 stands in the way are incorrect. For example, nowhere in 58 pages of reply comments (excluding attachments) was Duke able to explain how its proposal would not violate the plain text of H951 requiring that the voluntary customer programs neither advantage nor disadvantage non-participating customers and that “no cross-subsidization occurs” in either direction, S.L. 2021-165, Section 5, while it continues to promote cross-subsidization from participants to non-participants, Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC,’s Reply Comments 11, *GSAC Dockets* (N.C.U.C. June 23, 2023) (promoting the programs’ benefit as “the contribution of participating customers to buy down the cost of those resources”), nor could it.

If the Commission does conclude that it must resolve the legal question whether H951 requires regulatory surplus before holding a technical conference, SACE and NCSEA request the opportunity to brief the issue fully before the Commission issues decisions on Duke’s proposed H951 voluntary customer programs.

4. The positions of other parties.

Counsel for SACE and NCSEA have contacted all parties to the *GSAC and CEI Dockets* and are authorized to represent their positions on this Motion as follows.

The Public Staff supports a technical conference for the purpose of allowing the Commission to ask clarifying questions of the parties who filed comments in these proceedings. The Public Staff takes no position on the request for “neutral third parties” to present at a technical conference.

Google does not oppose the Motion.

CUCA does not oppose the Motion.

CCEBA does not oppose the Motion.

Counsel for CIGFUR had not had the opportunity to confer with CIGFUR members and stated that to the extent CIGFUR takes a position on the Motion, it will do so through a separate filing in the docket.

Duke was not in a position to respond within the time requested. Counsel for Duke stated that the Motion raised complex legal and policy issues impacting Duke's interest and the pending request for relief already before the Commission. Counsel for Duke requested SACE and NCSEA allow it until noon on Friday, September 8 to respond with its position. Counsel for Duke stated that if SACE and NCSEA file the Motion before then, then Duke will provide its position on the Motion in a response filed with the Commission.

Counsel for SACE and NCSEA did not receive responses from the remaining parties within the time requested.

5. Conclusion

For the foregoing reasons, the Commission should GRANT this Motion and hold a Commission-directed technical conference on regulatory surplus and any related issues it deems proper before rendering decisions on Duke's proposed GSAC and CEI programs or any other H951 voluntary customer programs Duke might propose. The Commission should invite CRS, RAP, and any other neutral third-party experts it deems appropriate to make presentations at the technical conference. If the Commission determines that parties that addressed the issue

in comments should have the opportunity to present as well, or instead of neutral third parties, then SACE and NCSEA request that opportunity. See Order Scheduling Technical Conference and Delaying Motion for Evidentiary Hearing, *In the Matter of 2020 Biennial Integrated Resource Plan Reports and Related 2020 REPS Compliance Plans by Duke Energy Carolinas and by Duke Energy Progress*, Docket No. E-100, Sub 165 (N.C.U.C. Aug. 24, 2021).

Thank you for considering this Motion.

Respectfully submitted this 5th day of September, 2023.

/s/ Nicholas Jimenez

Nicholas Jimenez
N.C. Bar No. 53708
SOUTHERN ENVIRONMENTAL LAW
CENTER
601 W. Rosemary Street, Suite 220
Chapel Hill, NC 27516
Telephone: (919) 967-1450
Fax: (919) 929-9421
njimenez@selcnc.org

*Attorney for Southern Alliance for Clean
Energy*

/s/ Ethan Blumenthal

Ethan Blumenthal
N.C. Bar No. 53388
Regulatory Counsel
North Carolina Sustainable Energy Association
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
Telephone: (919) 832-7601
ethan@energync.org

*Attorney for North Carolina Sustainable Energy
Association*

VERIFICATION

I, Nicholas Jimenez, verify that the contents of the foregoing Joint Motion for a Technical Conference are true to the best of my knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true. I am authorized to sign this verification on behalf of the Southern Alliance for Clean Energy.



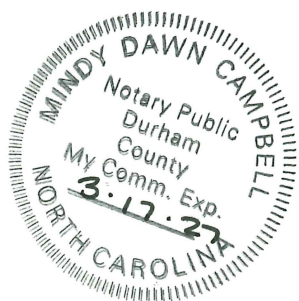
Nicholas Jimenez

Date: September 5, 2023

Durham County, North Carolina

Sworn to and subscribed before me this day by Nicholas Jimenez.

This 5th day of September, 2023.





Signature

Mindy D. Campbell, Notary Public

My commission expires: March 17, 2027

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing filing has been served on all parties of record by electronic mail or by deposit in the U.S. Mail, first-class, postage prepaid.

This 5th day of September, 2023.

/s/ Nick Jimenez