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**VIA Electronic Filing**

Ms. M. Lynn Jarvis, Chief Clerk  
North Carolina Utilities Commission  
Dobbs Building  
430 North Salisbury Street  
Raleigh, North Carolina 27603

**RE: Docket Nos. E-2, Sub 1170 and E-7, Sub 1169  
Reply Comments**

Dear Ms. Jarvis:

Enclosed for filing in the above-referenced dockets are the Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC.

Please feel free to contact me with any questions. Thank you for your assistance in this matter.

Very truly yours,

/s/E. Brett Breitschwerdt

EBB:kma

Enclosures

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-2, SUB 1170

DOCKET NO. E-7, SUB 1169

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Petition for Approval of Green Source	)	<b>REPLY COMMENTS OF DUKE</b>
Advantage Program and Rider GSA to	)	<b>ENERGY CAROLINAS, LLC AND</b>
Implement N.C. Gen. Stat. § 62-159.2	)	<b>DUKE ENERGY PROGRESS, LLC</b>

Pursuant to the North Carolina Utilities Commission's (the "Commission" or "NCUC") January 26, 2018 *Order Establishing Proceeding to Review Proposed Green Source Rider Advantage Program and Rider GSA* and subsequent Orders granting extensions of time, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP" and together with DEC, the "Companies") respectfully submit the following Reply Comments in support of the Companies' Green Source Advantage Program ("GSA Program" or the "Program") and DEC's Rider GSA and DEP's Rider GSA-1 ("GSA Tariffs"), as filed in these dockets for Commission approval in compliance with N.C. Gen. Stat. § 62-159.2 (the "GSA Program Statute"). The Companies' Reply Comments respond to the initial comments filed by the Public Staff-North Carolina Utilities Commission ("Public Staff"), the United States Department of Defense and all other Federal Executive Agencies ("DOD/FEA"), the University of North Carolina at Chapel Hill ("UNC-CH"), the North Carolina Clean Energy Business Alliance ("NCCEBA"), the Southern Alliance for Clean Energy ("SACE"), and the North Carolina Sustainable Energy Association ("NCSEA"), as well as to the joint initial comments of Apple and Google (jointly, "Apple/Google") and the Wal-Mart Stores East and Sam's East, Inc. (jointly, "Wal-Mart").

## **REPLY COMMENTS**

The Companies recognize and appreciate the significant interest in the GSA Program expressed by GSA Customer Groups<sup>1</sup> and Solar Developer Advocates,<sup>2</sup> as well as the comments and recommendations filed by the Public Staff. Similar to many of these parties, the Companies were actively engaged in the legislative process that led to Session Law 2017-192's ("HB 589") enactment. Accordingly, DEC and DEP designed the GSA Program to meet the express requirements of the GSA Program Statute, while also reflecting the State's broader renewable energy procurement framework enacted through this new legislation.

The Companies are fully supportive of delivering a GSA Program that meets Eligible GSA Customers' needs and goals, and have proposed certain incremental modifications to the GSA Program in these Reply Comments to address recommendations by the Public Staff and other parties. Specifically, the Companies propose to partially open the GSA Program within 60 days of Commission approval and prior to January 1, 2019; to offer 10-year and 15-year GSA Service Agreement options in addition to the 2-year, 5-year and 20-year options initially proposed; and to modify the Standard Offer option to address Public Staff concerns over two differing participation requirements with the Self-Supply option. The Companies are also filing the *pro forma* GSA Service Agreement and certain other Program documents to more fully inform interested GSA Customers regarding participation requirements for the Program.

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<sup>1</sup> For purposes of these Reply Comments, DOD/FEA, UNC-CH, Apple/Google, and Wal-Mart comprise the GSA Customer Groups.

<sup>2</sup> For purposes of these Reply Comments, NCCEBA, NCSEA, and SACE comprise the Solar Developer Advocates.

While the Companies are taking these constructive steps to modify aspects of the proposed GSA Program, it is also apparent from the GSA Customer Groups' and Solar Developer Advocates' initial comments that a fundamental misalignment of expectations exists in terms of the purpose of the GSA Program. The Companies' GSA Program is a customer-directed sustainability program to procure incremental renewable energy; however, while the GSA Customer Groups' and Solar Developer Advocates' support a sustainability program, they also argue for a cost-savings program that would allow these larger sophisticated customers to fix zero-risk long-term "hedges" of their energy supply at rates above the Companies' anticipated cost of procuring solar energy through the competitive procurement of renewable energy program ("CPRE Program") and based upon a GSA Bill Credit to be subsidized by nonparticipating customers. The Companies disagree with this altered approach to the GSA Program, and continue to support their carefully-crafted GSA Program structure as consistent with the GSA Program Statute, especially the mandate that nonparticipating customers be held neutral and neither advantaged nor disadvantaged by the Companies offering of the Program. The Companies, therefore, request the Commission approve the GSA Program and GSA Tariffs as modified in these Reply Comments.

**I. The Commission Must Decide Whether the GSA Program Is a Sustainability Program or Subsidy Program.**

The comments submitted by the Solar Developer Advocates and GSA Customer Groups argue that the Companies' proposed GSA Program should be fundamentally restructured to facilitate hedging and arbitrage activities that deliver artificially-derived savings to participating GSA Customers and above-market profits to Renewable Suppliers. Because these benefits will necessarily be funded by nonparticipating customers, the

threshold question for the Commission's resolution in this docket is whether the General Assembly intended N.C Gen. Stat. § 62-159.2 (i) to provide eligible GSA Customers with an opportunity to increase their commitments to renewable energy procurement without adversely impacting nonparticipating customers (as the Companies propose), or (ii) to require nonparticipating customers to subsidize Eligible GSA Customers' hedging strategies based on an administratively-calculated, long-term fixed forecast of avoided cost up to 20 years in the future (as the Solar Developer Advocates and certain GSA Customer Groups argue).

As presented in the Petition and discussed below, the Companies take the former view – N.C. Gen. Stat. § 62-159.2 is an extension of the State's evolving and expanding commitment to renewable energy, and offers additional renewable energy options to the largest and most sophisticated customers that are seeking to replace greater portions of their energy usage with renewable energy. At the same time, however, the General Assembly also enacted provisions to safeguard nonparticipating customers, and expressly directed the Commission to “ensure that all other customers are held neutral, neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the program customer.” N.C. Gen. Stat. § 62-159.2(e). Because the Solar Developer Advocates' and GSA Customer Groups' subsidy program proposal would materially increase nonparticipating customers' costs of electricity by artificially inflating the value of the GSA Bill Credit paid to participating GSA Customers, it must be rejected.

**A. The Companies' Approach to Implementing HB 589's Direct Renewable Energy Procurement Program Fits within the Public Utilities Act's Broader Least Cost Renewable Energy Procurement Framework.**

The Companies' approach to the GSA Program is grounded in the Public Utilities Act's mandate that DEC and DEP plan for their customers' energy needs and operate their system to deliver reliable and affordable energy utilizing the "least cost mix of generation and demand-reduction measures." N.C. Gen. Stat. § 62-2(3a). Over time, the General Assembly has increasingly incorporated renewable energy and sustainability requirements while continuing to emphasize cost-effectiveness and least cost approaches. Beginning with the creation of North Carolina's renewable energy and energy portfolio standard ("REPS") in 2007, the State established a robust commitment to expanding the renewable energy used in North Carolina's generation portfolio. The REPS mandates that DEC and DEP each develop and/or procure increasing amounts of new renewable energy resources to meet a minimum of 12.5% of the Companies' retail energy sales by 2021. Importantly, REPS also contemplates charging North Carolina customers for only the "incremental costs" of renewable energy above the utility's system avoided cost, with costs below avoided cost treated as system supply that is used to serve all customers, including those in North Carolina, South Carolina, and wholesale jurisdictional customers. N.C. Gen. Stat. § 62-133.8(h)(1).

HB 589 creates a new "competitive energy solutions" framework that builds upon the State's REPS commitment with the addition of two expanded renewable energy procurement initiatives – (i) the newly created CPRE Program, which requires the Companies, in the aggregate, to procure 2,660 megawatts ("MW") of new renewable energy capacity, allocated over 45 months, through the new competitive request for

proposals (“RFP”) procurement processes (*see* N.C. Gen. Stat. § 62-110.8), and (ii) the new “direct procurement” program (*i.e.*, the GSA Program), which further authorizes the procurement of up to 600 MW of new renewable energy and capacity at the direction of eligible customers over a five-year period (*see* N.C. Gen. Stat. § 62-159.2). HB 589 also links the two programs by providing that any GSA Program capacity that is not subscribed at the end of the five-year program offering, must be transitioned to the general renewable energy competitive procurement as an expansion of the CPRE Program. N.C. Gen. Stat. § 62-159.2(e). In this integrated manner, HB 589 positions the State to continue to significantly expand the Companies’ procurement of cost effective renewable energy resources through both direct procurement on behalf of participating Eligible GSA Customers and the CPRE Program on behalf of all customers.<sup>3</sup>

Like the REPS, these two new programs also include critical cost containment protections. The CPRE Program, for example, “ensure[s] the cost-effectiveness of procured new renewable energy resources” by requiring that “each public utility’s procurement obligation shall be capped by the public utility’s current forecast of its avoided cost calculated over the term of the power purchase agreement . . . consistent with the Commission-approved avoided cost methodology.” N.C. Gen. Stat. § 62-110.8(b)(2). The direct procurement program, moreover, includes unique provisions designed to ensure that the customers who are either not eligible or do not elect to participate in the program are not economically or otherwise harmed by those customers who can and do choose to participate, and also imposes a maximum cap on the bill credit (at the utility’s avoided cost). N.C. Gen. Stat. § 62-159.2(e). As discussed in the Companies’ Petition and further

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<sup>3</sup> *See* Petition, at 5.

supported in these Reply Comments, the Companies' GSA Program was carefully designed to facilitate a direct procurement of renewable energy opportunity for participating customers, while also ensuring nonparticipating customers are held neutral from the costs of these renewable energy facilities.

**B. The GSA Program Faithfully Implements HB 589's Direct Procurement Program Provisions While Ensuring Nonparticipating Customers Are Held Neutral.**

The Companies' GSA Program includes all of the statutorily-required elements while also ensuring that nonparticipating customers are "held neutral, neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the program customer." N.C. Gen. Stat. § 62-159.2(e). While the Companies will more thoroughly address specific comments and criticisms of the GSA Program in Section II *infra*, it is important for present purposes to underscore that the GSA Program satisfies the core statutory objectives of "allow[ing] eligible customers to select the new renewable energy facility from which the electric public utility shall procure energy and capacity . . . [and] to negotiate with the renewable energy suppliers regarding price terms" while "ensur[ing] that all other customers are held neutral." N.C. Gen. Stat. § 62-159.2(b), (e).

**1. The GSA Program allows Eligible GSA Customers to select their renewable energy facility and negotiate price.**

Consistent with HB 589's goal of expanding renewable energy procurement opportunities for Eligible GSA Customers, the Companies designed the GSA Program so that it would prove attractive and accessible to the greatest number of these customers. Recognizing that Eligible GSA Customers may vary in the degree to which they have experience in procuring and negotiating the pricing of renewable energy, the Companies



created two participation tracks to accommodate the spectrum of expectations and experience that Eligible GSA Customers might have.

The first track is a “Standard Offer” GSA procurement option, which is designed to accommodate those customers who wish to participate in the GSA Program but are more comfortable taking a passive role in the procurement and negotiation processes. Under this option, Eligible GSA Customers would direct the Companies to procure GSA Facilities on behalf of these customers.<sup>4</sup> To minimize administrative costs and leverage the CPRE Program created by HB 589, the Standard Offer procurement will be integrated within the CPRE Program RFP process to ensure that the cost of renewable power procured at the direction of participating GSA Customers under the GSA Program is comparably cost-effective to that of new renewable energy resources procured under the CPRE Program for all customers.<sup>5</sup> For renewable energy and capacity procured through this option, DEC or DEP will enter into a bundled GSA power purchase agreement (“PPA”) with the renewable supplier that is materially similar to the CPRE Program PPA for energy, capacity and RECs produced by the designated GSA Facility (or Facilities).<sup>6</sup> The GSA Customer will also execute a GSA Service Agreement that identifies the market price of RECs that the GSA Customer agrees to pay to DEC or DEP.<sup>7</sup>

The “Self-Supply” option represents the second track, and is targeted at those customers who seek to take a more active and direct role in selecting the GSA Facilities and taking advantage of the statutorily-prescribed opportunity to negotiate price terms. N.C. Gen. Stat. § 62-159.2(b). Under this option, the Eligible GSA Customer will be

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<sup>4</sup> Petition, at 7-8.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 15.

<sup>7</sup> *Id.* at 14.

responsible for selecting the GSA Facility, negotiating the price terms with the Renewable Supplier, and executing the standard form GSA term sheet (“GSA Term Sheet”) provided by the Companies.<sup>8</sup> Either DEC or DEP will enter into an unbundled GSA PPA with the Renewable Supplier for energy and capacity (but not the RECs) produced by the designated GSA Facility (or Facilities). The RECs generated by the GSA Facility will be separately negotiated and contracted for between the GSA Customer and the Renewable Supplier as part of the “All-In Negotiated Price.”<sup>9</sup>

In sum, under either option, the Companies “pay the owner of the renewable energy facility which provided the electricity,” and the GSA Customer directs the procurement of renewable energy and pays for and receives the renewable energy and RECs created by the GSA Facility.<sup>10</sup>

**2. The GSA Program’s bill credit mechanism is transparent, market-based, and ensures nonparticipating customers are held neutral.**

Regardless of which option a GSA Customer chooses for selecting a GSA Facility, GSA Customers remain subject to their normal retail bills (*i.e.*, continue to be full requirements retail customers), and are also responsible for paying “the total cost of any renewable energy and capacity procured by or provided by the electric public utility for the benefit of the program customer.” N.C. Gen. Stat. § 62-159.2(e). For both the Standard Offer and Self-Supply Customers (for 20-year term only), the first step in calculating the GSA Product Charge related to the incremental renewables procurement is determining the

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<sup>8</sup> *Id.* at 12.

<sup>9</sup> *Id.* at 17, 21.

<sup>10</sup> As discussed in Section V *infra*, while the GSA Customer ultimately receives the renewable energy attributes/RECs, the customer is initially paying the total cost of renewable energy and capacity through the GSA Product Charge, with the non-REC cost then being offset by the GSA Bill Credit under both the Standard Offer and Self-Supply options. In this manner, the utility is “procur[ing] energy and capacity on behalf of the participating customer” as contemplated in N.C. Gen. Stat. § 62-159.2(b).

product of the quantity of energy delivered to DEC or DEP by the designated GSA Facility (or Facilities) in kilowatt-hours (“kWh”) during the prior billing month multiplied by the applicable “GSA Tranche Weighted Average Price”<sup>11</sup> (in dollars-per-MWh).<sup>12</sup> Because the GSA Tranche Weighted Average Price is a bundled product that includes the REC Value, the Self-Supply Customer’s GSA Product Charge must be adjusted to remove the REC Value to account for the Customer’s separate purchase of the RECs from the GSA Facility.

Recognizing that the electric utilities will be purchasing the renewable energy and capacity and that the GSA Facilities will ultimately be system assets providing energy and capacity to serve all of the Companies’ native load customers, the statute requires that the GSA Customers “receive a bill credit for the energy as determined by the Commission; provided, however, that the bill credit shall not exceed utility’s avoided cost.” N.C. Gen. Stat. § 62-159.2(e). Accordingly, as originally conceived, the GSA Program calculates a single GSA Bill Credit applicable to both Standard Offer and Self-Supply Customers that elect a 20-year term that is equal to the capacity-weighted average price of all proposals selected in the applicable tranche of the CPRE RFP Solicitation, minus the “GSA REC Value,” which represents the forecasted cost of RECs to be received by the GSA Customer participating in the Program.<sup>13</sup> Consistent with the Public Utilities Act’s least-cost framework and HB 589’s emphasis on procuring renewable energy through competitive

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<sup>11</sup> As discussed in Section II.C *infra*, the Companies are proposing limited modifications to the GSA Standard Offer and calculation of the Bill Credit for Standard Offer and 20-year Self-Supply GSA capacity in order to address certain concerns raised by the Public Staff. The revised GSA Program design, instead of relying upon the CPRE Tranche Average Weighted Price, will utilize the “GSA Tranche Weighted Average Price,” which will be equal to the capacity-weighted average price of all proposals selected in the GSA RFP Solicitation tranche applicable to either the Self-Supply or Standard Offer enrollment.

<sup>12</sup> Petition, at 19, 21.

<sup>13</sup> The GSA REC Value will be determined by the Companies prior to each GSA Enrollment Period, based on a national, voluntary market index for procuring RECs. Petition, at 17-18.

and transparent procurement events, this methodology ensures that the 20-year Bill Credit offered to GSA Customers is benchmarked to real-time, market-based prices as determined by the new CPRE Program enacted in HB 589.

In sum, the Companies' GSA Program provides a tangible, incremental opportunity for Eligible GSA Customers to materially increase their procurement of renewable energy up to 125% of their maximum annual peak demand. Absent the GSA Program, Eligible GSA Customers would be covered only by the Statewide REPS requirements, which mandate that 12.5% of the Companies' retail energy sales consists of renewable energy by 2021. The GSA Program thus provides a very real incremental benefit to the GSA Customer Groups insofar as it empowers them to increase their reliance on renewable energy beyond REPS.<sup>14</sup> Yet, as discussed in Section I.C, *infra*, the GSA Customer Groups and Solar Developer Advocates are not satisfied with the program established by HB 589, and seek to enlarge its benefits by transforming it into a cost-savings program funded at the expense of nonparticipating customers. Because HB 589 expressly prohibits precisely this kind of cross-subsidization, this proposal must be rejected.

**C. Reliance on a Maximum Long-Term Avoided Cost Value Ignores the State's Increasing Use of Market-Based Price Signals and Would Require Nonparticipants to Unlawfully Subsidize GSA Customers.**

Although the Companies' proposed GSA Program satisfies the statutory requirements and clearly meets the GSA Customer Groups' objectives of cost-effectively achieving their renewable energy goals, these intervenors argue that the Program does not

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<sup>14</sup> See, e.g., Walmart Initial Comments at 2 ("Walmart has established aggressive and significant renewable energy goals...."); SACE Initial Comments at 2 ("[M]any of these large customers have adopted ambitious sustainability and renewable energy goals. As of 2017, 63% of Fortune 100 companies had set targets to reduce greenhouse gas emissions and purchase clean energy. Yet, these customers also frequently face challenges accessing renewable energy."); Apple/Google Joint Initial Comments at 2 ("[A] reliable and sustainable electricity supply is critical to intervenors' business operations and requires sourcing power from renewable energy."); UNC Initial Comments, at 5-6 (identifying goal of "reducing its carbon emissions").

go far enough, and should be fundamentally changed to also deliver “hedging” opportunities and guarantee cost savings to GSA Customers.<sup>15</sup> Indeed, NCSEA goes so far as to devote a Section of its comments to laying out its criticism of the GSA statute itself.<sup>16</sup> Yet, HB 589 is now the law, and it plainly does not allow the GSA Program to serve as a platform for creating arbitrage opportunities that are subsidized by nonparticipating customers. Requiring nonparticipants to pay above-market rates for renewable energy – with the profits inuring to the participating GSA Customers – does not comport with HB 589’s reform of North Carolina’s renewable energy procurement framework to promote competitive mechanisms nor does it satisfy the GSA Program Statute’s express mandate that nonparticipating customers be “held neutral, neither advantaged nor disadvantaged.”

**1. The Solar Developer Advocates’ and GSA Customer Groups’ proposal relies on a mischaracterization of the law that results in nonparticipating customers paying for the “artificial savings” demanded by these Parties.**

The crux of the Solar Developer Advocates’ and GSA Customer Groups’ argument is that the GSA Bill Credit for the renewable energy and capacity procured under 20-year PPAs should equal the utility’s forecasted 20-year avoided cost rather than equal the competitively-derived GSA Tranche Weighted Average Price determined in the applicable

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<sup>15</sup> See, e.g., Apple/Google Joint Initial Comments at 2 (opining that “[u]tilizing renewable energy allows participating customers to save money, hedge against volatile fossil fuel prices, and lock in cost-effective, fixed energy rates”); NCSEA Initial Comments at 15 (criticizing the GSA Program because it does not provide large customers with an opportunity to hedge against future price increases); UNC Initial Comments at 5 (criticizing the GSA Program because it does not provide “any financial advantage from participating in the program”); SACE Initial Comments, at 14 (criticizing the GSA Program because it does not provide an “opportunity to lock in a fixed price that will decrease [] energy costs or hedge against future rate increases”).

<sup>16</sup> NCSEA Initial Comments, at 12-14.

CPRE competitive procurement event.<sup>17</sup> In doing so, these parties transform the statute’s cap on the bill credit amount (*i.e.*, the utility’s avoided cost) into the bill credit itself, and ask the Commission to ignore the competitively-established market data and price of renewable energy that is contemporaneously being procured by the Companies and developed through the CPRE Program. By disconnecting the bill credit from the most current and competitive sources of renewable energy pricing and replacing it with 20-year avoided cost forecasts never before used for such purposes, the Solar Developer Advocates and GSA Customer Groups create an artificial “price to beat” that is easily gamed and that provides them with the guaranteed cost-savings they desire. This is illustrated in the following hypothetical:

Figure 1:

<b>20 Year Avoided Cost</b>	<b>\$57</b>
GSA Bill Credit	\$57
Negotiated PPA Price	\$45
GSA Product Charge	\$45
<b>GSA Weighted Avg. Price</b>	<b>\$42</b>

In this example, the long-term forecasted 20-year avoided cost per MWh is \$57 and the GSA Customer negotiates to directly procure solar power from a GSA Facility at a price of \$45/MWh. The GSA Customer Charge that is applied to the participating GSA Customer would be \$45/MWh, while the offsetting GSA Bill Credit paid to the GSA Customer would be \$57/MWh. As the GSA Bill Credit is recovered from all

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<sup>17</sup> See *e.g.*, NCCEBA Initial Comments (“Instead of setting the bill credit at or near the avoided cost and allowing the GSA Customer and renewable supplier to share the benefits between the avoided cost and the negotiated price . . . Duke has proposed that it be allowed to capture all of those benefits by setting the Bill Credit at the average price of winning bids through the CPRE program”); SACE Initial Comments, at 11 (suggesting that the “avoided cost rate represents the rate at which non-participating customers are held neutral from the impact of the renewable energy procured on behalf of the program customer,” and that “cost savings” below Duke’s avoided cost should be assigned to the GSA Customer versus the general customer base under the Duke proposal).

nonparticipating customers by the utility through the fuel factor in North Carolina, this necessarily results in nonparticipating customers paying an extra \$12 per MWh in excess of the PPA price contracted for by the GSA Customer. Notably, the Renewable Supplier also benefits by delivering a higher-priced 20-year solar energy product than the \$42/MWh competitively-determined average market price of solar energy being contemporaneously procured through the CPRE Program. Figure 2 extends the Figure 1 cross-subsidization hypothetical over 20 years and shows that the potential GSA Bill Credit over-payment by nonparticipating customers compared to the CPRE Program-procured solar could approach \$350 million dollars over the 20-year term.

Figure 2:

20 Year Avoided Cost Rate	\$57.00
CPRE Average Estimate	\$42.00
Delta	(\$15.00)
MWs	600
Capacity Factor	22%
Hours	8760
MWH/Year	1,156,320
\$/Year (MWH X Difference)	(\$17,344,800)
Years	20
Total Incremental Cost (\$/Year X Years)	(\$346,896,000)

To be clear, despite the Solar Developer Advocates' and GSA Customer Groups' efforts to characterize this activity as "hedging," their proposal does not require the GSA Customer to assume any degree of risk – a necessary factor for activity to be considered hedging. Rather, what these parties appear to envision is a Commission-established trading platform for engaging in arbitrage activities, enabling them to procure PPAs in the market below the administratively-derived fixed forecasted avoided cost price, and to then require nonparticipants to pay the "artificial savings" difference through the GSA Program. This

contemporaneous purchase in one market and sale in another for profit is the very definition of arbitrage. See Merriam Webster Online Dictionary (defining “arbitrage” as “the nearly simultaneous purchase and sale of securities or foreign exchange in different markets in order to profit from price discrepancies”).

As explained below, neither the statutory framework nor the Commission’s past orders and practice permit the cost-shifting proposal advanced by the Solar Developer Advocates and GSA Customer Groups. It thus should be rejected.

**2. The HB 589 statutory framework does not support use of 20-year forecasts of avoided costs to set the bill credit.**

As noted above, the Solar Developer Advocates’ and GSA Customer Groups’ are asking the Commission to set the bill credit for 20-year PPAs at the utility’s avoided cost based on a misapplication of the relevant statutory provision. The law provides that the bill credit “*shall not exceed* [the] utility’s avoided costs” – it does not require that the bill credit equal the utility’s avoided cost. N.C. Gen. Stat. § 62-159.2(e) (emphasis added). Put another way, the reference to avoided cost is meant to create a ceiling on the amount of the bill credit, and in this way serves as a safety valve in the event that market prices for renewable energy resources reach a level that exceeds the utilities’ avoided cost. Yet, the intervening parties propose that the Commission ignore the actual market prices established by contemporaneous CPRE competitive procurements and instead mechanically apply an administratively-determined forecasted 20-year avoided cost value as the GSA Bill Credit. In addition to being inconsistent with the “hold neutral” provisions of N.C. Gen. Stat. § 62-159.2, this approach is also inconsistent with the legislative purpose underpinning numerous other provisions of HB 589.



Importantly, N.C. Gen. Stat. § 62-159.2 employs the avoided cost value only as a last resort, not-to-be-exceeded price cap, which is consistent with the General Assembly’s unambiguous shift in HB 589 toward competitive procurements and market-based pricing of renewable energy and away from over-reliance on longer-term avoided cost forecasts for setting solar and other renewable energy PPA pricing. Indeed, HB 589 was precisely designed to impose competitive procurement as the sole mechanism to procure renewable energy facilities above 1 MW for future terms longer than five years, reflecting the legislature’s clear objective to minimize the risk of customers overpaying for renewable energy resources based on longer-term commodity forecasts that were never intended to serve as inputs to 20-year contracts.

In Part I of HB 589, for example, the General Assembly amended N.C. Gen. Stat. § 62-156’s provisions regarding power sales by small power producers to public utilities. These revisions limit the term of the Companies’ administratively-derived standard offer tariffs to 10 years, and further restrict the term of PURPA PPAs for all qualifying facility (“QF”) generators above 1 MW to 5 years. N.C. Gen. Stat. § 62-156(b), (c). This section also mandates that the “individual characteristics of the small power producer” should prospectively be recognized to more precisely determine the avoided capacity and energy rates to be offered to QF generators.<sup>18</sup> *Id.* HB 589, Part II, moreover, creates the CPRE Program, which relies on a competitive procurement process for the express purpose of

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<sup>18</sup> The Commission’s *Sub 148 Avoided Cost Order* directed that it would be appropriate for DEC and DEP to file in the next biennial avoided cost proceeding an “evaluation of capacity benefits of QF generation” and a “rate design that considers factors relevant to the characteristics of QF-supplied power that is intermittent and non-dispatchable.” To the extent a GSA Bill Credit applicable to QF solar generators is based upon the currently-approved “generic avoided cost profile” prior to the time the Commission has opportunity to consider the specific capacity value and characteristics of solar QF-supplied power, a further imprecision in the calculation of long-term avoided cost and risk of over-payment by nonparticipating customers is created. *Order Establishing Standard Rates and Contract Terms for Qualifying Facilities*, at 110-111 Docket No. E-100, Sub 148 (October 11, 2017) (“Sub 148 Avoided Cost Order”).

ensuring that the incremental renewable energy procured under that program is cost-effective. Notably, QF generators can alternatively participate in this procurement process and obtain a longer-term PPA of 20 years (as opposed to the 5-year term under N.C. Gen. Stat. § 62-156). This difference in contract length can only be explained in relation to the way price is determined – *i.e.*, to minimize the risk that customers will overpay on a longer-term PPA, the price must be determined through a competitive procurement process.

HB 589’s creation of the GSA Program in Part III similarly reflects an approach to establishing pricing that deemphasizes (rather than mandates) reliance on longer-term forecasted avoided cost. Indeed, the statute vests the Commission with the authority to determine the amount of the bill credit, and makes reference to the utility’s avoided cost only as a backstop cost cap. This cost-effectiveness backstop is similar to the CPRE Program Statute discussed above. The Commission’s determination, moreover, is to be guided by the mandate that nonparticipating customers must be held neutral. Finally, if the Commission were to assume *arguendo* that the utility’s long-term 20-year fixed avoided cost was, by itself, intended to hold nonparticipating customers neutral, the GSA Program Statute’s additional language requiring neutrality would be superfluous and serve no purpose – a result that cannot be squared with well-established principles of statutory construction previously recognized by this Commission.<sup>19</sup>

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<sup>19</sup> See *e.g.*, *Order Approving Fuel Charge Adjustment*, Docket No. E-7, Sub 934 (Aug. 6, 2010) *citing Hall v. Simmons*, 329 N.C. 779, 784, 407 S.E. 2d 816, 818 (1991) (“[s]ignificance and effect should, if possible ... be accorded every part of the act, including every section, paragraph, sentence or clause, phrase, and word.”).

**3. Commission orders and practice have not accepted 20-year forecasts of avoided costs as reasonable for long-term PPA pricing.**

That HB 589 evinces a clear policy of favoring competitively determined prices while simultaneously reining in past reliance on long-term, administratively-derived fixed avoided cost pricing is entirely consistent with recent Commission decisions. Indeed, the Commission's implementation of PURPA over the past 35 years has never relied upon a 20-year forecast of the utility's avoided costs as reasonable. In its 2015 *Order Setting Avoided Cost Input Parameters*, for example, the Commission rejected proposals to expand the standard offer avoided cost PPA eligibility and extend tenor to 20 years based upon concerns regarding increasing the risks and burden on ratepayers of longer-term avoided cost:

The Commission must also balance the federal and North Carolina public policy requirement that QFs be encouraged against the risks and burdens that long-term contracts place on customers. Increasing the maximum cap for eligibility for the standard contract to ten MW and extending the maximum standard contract term to 20 years may tilt the balance too much in the QFs' direction and increase the risks and burdens to ratepayers. Based upon the foregoing, the Commission determines not to approve the proposals to increase the size limit to ten MW and extend the maximum term length to 20 years.<sup>20</sup>

More recently, the Commission highlighted the reforms enacted in HB 589 to further diminish the risks of relying on forecasted avoided cost values in long-term PPAs:

The changes in the standard offer term [to 10 years] and eligibility threshold [to one MW], viewed jointly with the other changes being adopted by the Commission, reflect a comprehensive effort to modify the State's avoided cost policies towards a model that is more efficient and sustainable over the long term, while at the same time providing protection to ratepayers from overpayment risk and certainty to QFs. One part of this effort is the Commission's

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<sup>20</sup> *Order Setting Avoided Cost Input Parameters*, Docket No. E-100 Sub 140, at 21 (Dec. 31, 2015).

implementation of the General Assembly's directives enacted in HB 589.<sup>21</sup>

North Carolina's shift away from administratively-derived, longer-term avoided cost also aligns with recent calls for national PURPA policy reform designed to "move away from the use of administratively determined avoided costs to their measurement through competitive solicitations or market clearing prices."<sup>22</sup>

The Solar Developer Advocates and GSA Customer Group provide no justification for disregarding the competitive, market-driven policies of HB 589 and similarly supportive Commission decisions, and their proposal to resurrect approaches that unreasonably rely on long-term avoided cost forecasts to create "artificial savings" funded by nonparticipating customers should be rejected.

**4. Divorcing the GSA Bill Credit from competitively determined prices disadvantages nonparticipating customers.**

The specific provisions of N.C. Gen. Stat. § 62-159.2, the framework of HB 589, and the Commission's past decisions leave no question that reliance on longer-term forecasts of avoided costs exposes customers to unreasonable risk of overpayment. Moreover, the immediate arbitrage opportunities sought by the Solar Developer Advocates and GSA Customer Groups only further underscore that the avoided cost forecasts are not in line with the current renewable energy pricing that can be competitively procured in the market today. This gaming of prices in turn harms nonparticipating customers by requiring them to pay the difference between the out-of-sync forecasted avoided cost and real-time market prices. These adverse outcomes demonstrate that the intervenors' proposal cannot

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<sup>21</sup> *Sub 148 Order*, *supra* note 17 at 38.

<sup>22</sup> See National Association of Regulatory Utility Commissioners December 18, 2017 Letter to Federal Energy Regulatory Commission, Re: Public Utility Regulatory Policies Act of 1978 Regulatory Reform, at 2, accessible at: <https://www.naruc.org/about-naruc/press-releases/naruc-pushes-for-purpa-reform-in-letter-to-ferc/>.

satisfy the statutory requirement that nonparticipants be held neutral (and neither advantaged nor disadvantaged). *See* N.C. Gen. Stat. § 62.159.2(e).

Equally troubling is the Solar Developer Advocates’ and GSA Customer Groups’ underlying premise that they should be permitted to obtain the best possible price in the market but that nonparticipating customers would be somehow “advantaged”<sup>23</sup> by requiring the renewable power directly procured through the GSA Program to be equally as cost-effective as the average price of renewable power competitively procured for the benefit of all customers through the CPRE Program. The Companies’ proposal intentionally sought to avoid these sorts of disparities by relying on the newly created CPRE Program as the most visible and transparent long-term renewable energy pricing mechanism in the State. This approach levels the playing field and ensures that the same “product” can be competitively procured through both CPRE and GSA, which would include rights to more effectively dispatch, operate, and control the generating facility, as well as mandate the transfer of RECs to the appropriate GSA Customer recipient.

Further, if a GSA Customer can procure renewable power *below* the CPRE capacity-weighted average price (or a forecasted five-year avoided cost rate), then the Self Supply option allows the GSA Supplier and GSA Customer to share this value through the independently-negotiated REC transaction.<sup>24</sup> However, if nonparticipating customers are forced to pay a higher price than could be competitively obtained in the CPRE—which effectively would be the case through nonparticipating customers’ funding the GSA Bill

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<sup>23</sup> NCCEBA Initial Comments, at 16; SACE Initial Comments, at 10; UNC Initial Comments, at 3-4.

<sup>24</sup> *See* Petition, at 21-22.

Credit—then they are not held neutral.<sup>25</sup> Fundamentally, the Companies have developed and continue to support the GSA Program as delivering a customer-directed sustainability program opportunity; the Companies do not support extending the renewable energy benefits of the GSA Program to become a subsidy program that disadvantages nonparticipating customers.

**II. The GSA Bill Credit is Purposefully Designed to Ensure Both Neutrality for Nonparticipating Customers and System Cost Recovery for Energy Delivered under the GSA Program.**

The GSA Program was purposefully designed to facilitate a Customer-directed sustainability program opportunity for participating North Carolina Eligible GSA Customers, while also ensuring the Companies will be able to fully recover their purchased power costs associated with implementing the Program. NCCEBA is the only intervenor to address utility GSA Program cost recovery, and its proposed alternative GSA Program design, if adopted, would effectively guarantee that the Companies would not recover their costs of implementing the Program.<sup>26</sup>

Under the NCCEBA alternative design, the GSA Bill Credit paid to the GSA Customer would equal the utility's avoided cost over the contracting period of the GSA PPA, while the bundled GSA PPA price for renewable energy, capacity, and RECs would equal the presumptively-lower negotiated price between the GSA Customer and Renewable Supplier.<sup>27</sup> As noted above, NCCEBA extensively advocates that a higher Bill

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<sup>25</sup> NCCEBA's generalized claim that artificially derived savings below avoided costs could somehow benefit the Companies' shareholders is unfounded, and NCCEBA offers no support regarding this argument. NCCEBA Initial Comments, at 12, 16. To the contrary, if there were any "savings" to be realized through reliance on the competitively-derived average pricing from the CPRE Program (and the Companies do not believe that there will be), they would lower the Bill Credit amount paid to the participating GSA Customers that is funded by nonparticipating customers.

<sup>26</sup> NCCEBA Initial Comments, at 27.

<sup>27</sup> *Id.* at 21-23.

Credit set at avoided cost is appropriate to create an artificial cost savings above the Renewable Supplier PPA pricing to be shared between the GSA Customer and Renewable Supplier.<sup>28</sup> However, when it comes to cost recovery, NCCEBA suggests there is “no need for any recovery by the Companies pursuant to new Section (a1)(11) of the fuel factor” because, according to NCCEBA, the GSA Customer is paying the full cost of the Renewable Supplier PPA.<sup>29</sup> While this approach may work well for the GSA Customer and Renewable Supplier, it fails to recognize that the Bill Credit paid to the GSA Customer must—and is authorized under new Section (a1)(11) of the fuel factor—to be recovered. As stated in the Petition, the Companies’ non-administrative/non-REC costs for energy and capacity to be recovered through new Section (a1)(11) of the North Carolina fuel factor will be equal to the GSA Bill Credit provided to the GSA Customer multiplied by the megawatt-hours generated by the GSA Facility during the annual fuel factor test period.<sup>30</sup> Otherwise, this Bill Credit paid to the GSA Customer will effectively go unrecovered.

NCCEBA also fails to recognize that the GSA Facilities will be “system supply resources” delivering energy and capacity to the Companies’ grid to serve all North Carolina retail, South Carolina retail, and wholesale jurisdictional customers.<sup>31</sup> As designed by the Companies, the cost of the energy and capacity generated by GSA Facilities will be allocated for recovery from all jurisdictions and customers. This approach of allocating GSA Program power supply costs (minus the Standard Offer REC Value assigned to and paid for by the GSA Customer) between the three jurisdictional classes served by DEC and DEP is consistent with the manner in which the Companies recover all

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<sup>28</sup> *Id.* at 9, 11.

<sup>29</sup> *Id.* at 27.

<sup>30</sup> Petition, at 27.

<sup>31</sup> *Id.*

other purchased power expense today, including REPS purchases. This approach is notably also consistent with DEC's cost recovery approach under the Green Source Rider pilot in effect from 2013-2016.

The Companies recognize that inter-jurisdictional cost recovery issues may not be transparent to NCCEBA and the GSA Customer Groups. However, it is important for the Commission to appreciate that recovery of the GSA Bill Credit under new Section (a1)(11) of the fuel factor is unique to North Carolina. HB 589 amended the fuel factor to expressly provide for the recovery of "[a]ll nonadministrative costs related to the renewable energy procurement pursuant to G.S. 62-159.2 not recovered from the program participants." N.C. Gen. Stat. § 62.133(a1)(11). In the South Carolina retail and wholesale jurisdictions, however, the Companies may recover only the equivalent of their purchased power costs and no more. Therefore, to ensure full cost recovery across all three jurisdictions and to ensure that both North Carolina retail and other jurisdictional customers classes are held neutral from the GSA Program, the Companies have designed the Bill Credit to be equal to the GSA Program Unbundled Self-Supply PPA Price (for Self-Supply) or the Bundled Renewable Energy Product PPA Price minus the GSA REC Value (for Standard Offer). This methodology ensures that the Bill Credit does not exceed the PPA price, which reflects the value of the non-renewable energy and capacity being delivered as system supply for the benefit of all customers and jurisdictions, while the GSA Customer pays for and retains the RECs. In contrast, approval of NCCEBA's Bill Credit proposal that would exceed the



GSA PPA Price would effectively create the potential for stranded costs in these other jurisdictions.<sup>32</sup>

### **III. The GSA Program's Standard Offer Option Is Designed to Maximize Customer Participation within the Bounds of the Law.**

As described in the Petition and discussed above, the Companies' GSA Program accomplishes the objectives of N.C. Gen. Stat. § 62-159.2 by providing two distinct procurement options for Eligible GSA Customers – the Standard Offer and Self-Supply options. Section I.B *supra* highlights how these two participation tracks are designed to ensure that the GSA Program appeals to the broadest number of Eligible GSA Customers. While the Self-Supply option targets more sophisticated customers seeking to be directly involved in selecting facilities and negotiating price, the Standard Offer track offers a turnkey participation option where the GSA Customers can direct DEC or DEP to select the facilities and negotiate the price through the CPRE Procurement process. Below the Companies address certain comments and criticisms regarding the Standard Offer option.

#### **A. The Standard Offer Option Enhances Eligible GSA Customer Choice.**

As an initial matter, the Public Staff recognizes the value added by the Standard Offer, and acknowledges that “some customers may not wish to select the renewable energy facilities from which the renewable energy is procured on their behalf or negotiate

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<sup>32</sup> As noted in Section I.A *supra*, the REPS Statute provides for full recovery of the “incremental costs” of renewable energy purchases from the North Carolina retail jurisdiction, while the energy and capacity cost components of a renewable PPA up to avoided cost are allocated between the jurisdictions served by the Companies. Under the GSA Program, the North Carolina retail GSA Customer pays for and is assigned the RECs, so only the cost of energy and capacity delivered by a GSA Facility is being allocated between the three jurisdictions. Should the Commission determine that authorizing a GSA Bill Credit exceeding the GSA PPA Price of the energy and capacity being delivered to the Companies serves the public interest in North Carolina and meets the requirements of N.C. Gen. Stat. § 62-159.2(e), the Companies plan to seek full recovery of the “incremental costs” of the GSA Program (*i.e.*, the delta above the GSA PPA Price up to the GSA Bill Credit) from the North Carolina retail jurisdiction through Section (a1)(11) of the fuel factor in a similar manner to REPS.

price terms, as contemplated by the Self-Supply option.”<sup>33</sup> The Public Staff concludes that “it is, therefore, appropriate for the Companies to identify a separate mechanism to help identify and select renewable energy facilities to meet the needs of those customers.”<sup>34</sup> As discussed above, this is precisely the goal of the Standard Offer, and the Companies appreciate the Public Staff’s support of the concept.

NCCEBA, on the other hand, takes issue with the Standard Offer option simply because it offers an additional path to participating in the GSA Program that is less direct than the Self Supply option.<sup>35</sup> Yet, NCCEBA offers no rationale for why the Standard Offer must be eliminated when the Self Supply option is fully available to those Eligible GSA Customers who wish to participate in the most direct way possible. The Companies share the Public Staff’s view that this optionality ensures maximum customer participation by accommodating Eligible GSA Customers with varied preferences and resources. Indeed, the voluntary nature of the GSA Program, as emphasized by the Public Staff, further supports the need for program options that suit a diverse Eligible GSA Customer base.

#### **B. HB 589 Does Not Prohibit Leveraging of the CPRE Program.**

While the Public Staff supports a Standard Offer option, it notes its concerns about the “linkage” of the Standard Offer option with the CPRE Program’s RFP process as being “counter to the timeframes and purposes called for in each statute.”<sup>36</sup>

Although the Companies acknowledge that N.C. Gen. Stat. § 62-159.2’s express references to the CPRE Program are limited to directing that the unsubscribed renewable

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<sup>33</sup> Public Staff Initial Comments, at 8.

<sup>34</sup> *Id.*

<sup>35</sup> NCCEBA Initial Comments, at 7-9.

<sup>36</sup> Public Staff Initial Comments, at 4-5.

energy capacity from the GSA Program be reallocated to and included in the CPRE procurement process at the end of the five-year GSA Program implementation period,<sup>37</sup> this provision in no way proscribes an earlier leveraging of the independently-administered CPRE procurement process. The Companies thus disagree with the Public Staff's interpretation that the GSA Program must operate independently in all respects from the CPRE Program, and further oppose a reading of HB 589 that would unnecessarily silo the legislation's new programs and ignore opportunities to leverage efficiencies and cost-savings for all customers.

The Public Staff also suggests that the statutory language of N.C. Gen. Stat. §§ 62-159.2 and 62-110.8 reveals separate goals and purposes for each program, and that the Standard Offer option "fails to recognize the distinct structures established for both programs by the General Assembly" by leveraging the CPRE RFP process.<sup>38</sup> To the contrary, DEC and DEP view the purposes of both programs as similarly requiring the utilities to procure cost-effective renewable energy below the utility's forecasted avoided costs, with the material difference being the customers for whom the renewable energy is being procured. As described in the Petition, the Companies designed the Standard Offer option to cost-effectively facilitate the direct procurement of new renewable energy resources on behalf of State's UNC System, military, and large non-residential customers and facilitate their ability to obtain the associated renewable energy attributes, including RECs, to meet their sustainability goals.<sup>39</sup> The Companies' GSA Program Standard Offer option is wholly consistent with the specific purpose of Section 62-159.2 by creating

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<sup>37</sup> See also N.C. Gen. Stat. § 62-110.8(a).

<sup>38</sup> Public Staff Initial Comments, at 4-5, 8.

<sup>39</sup> Petition, at 5.

optionality for certain large non-residential customers who may lack the resources to navigate the Self-Supply option process or otherwise prefer the opportunity to leverage the competitive and independently-administered CPRE Program RFP process to meet their sustainability objectives.

At bottom, neither the Public Staff nor any other party has identified a procurement methodology that is more efficient than the CPRE Program procurement process for customers who do not elect the Self-Supply option. Accordingly, the Companies continue to support leveraging the CPRE RFP process for purposes of offering the Standard Offer, subject to the modifications discussed below to address certain of the Public Staff's specific concerns.

**C. The Companies Support Modifying the Standard Offer Option to Address Public Staff Concerns.**

The Public Staff also expresses concern regarding certain design elements of the Standard Offer option that it believed could bias participation towards this option – namely, that: 1) network upgrade costs identified under the CPRE grouping study may not be assigned to specific projects selected through the Standard Offer option; and 2) Renewable Suppliers must have a completed system impact study to be selected under the Self Supply option.<sup>40</sup> The Companies appreciate the Public Staff's concerns, and, as explained below, agree to modify the GSA Program design to address these issues.

Regarding the Public Staff's first concern, the Companies propose to revise the proposed procurement of GSA Capacity through the CPRE RFP Process by mandating that potential Renewable Suppliers must separately bid the full cost of delivering their potential project (including potential grid upgrades) to serve requested GSA capacity in addition to

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<sup>40</sup> Public Staff Initial Comments, at 10.

offering a CPRE Program proposal (where the cost risk of potential grid upgrades is not included in the bid).<sup>41</sup> Under this approach, the GSA capacity would no longer be fully integrated with the CPRE capacity and would be segregated and directly assigned to the GSA Customers that applied for GSA capacity to be procured through the CPRE Tranche RFP. Requiring a Renewable Supplier to include the full cost to deliver the GSA Facility, including an estimate of grid upgrades, in its proposal to supply renewable energy to serve requested GSA Standard Offer capacity mitigates the concern that Standard Offer proposals are being bid without the grid upgrade risk and ensures comparability to projects bid under Self Supply. With the exception of this differing approach to grid upgrades, all other aspects of the CPRE RFP Guidelines and process, including consistent eligibility requirements and bid evaluation methodology, would continue to apply. Projects selected to serve Standard Offer GSA Capacity will be used to establish a “GSA Tranche weighted average price” that then sets the comparable Unbundled Self-Supply Product price available to Renewable Suppliers offering to serve Self-Supply Customers.<sup>42</sup>

The Public Staff’s second concern is that the Self Supply option required Renewable Suppliers to have completed the system impact study step of the interconnection study process to be eligible to submit a GSA Term Sheet to a potential GSA Customer, while the Standard Offer option did not similarly impose this requirement.<sup>43</sup> The Companies purposefully incorporated the system impact study requirement under the Self Supply option to ensure that a GSA Facility has been

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<sup>41</sup> A market participant may elect to only offer a GSA Program proposal and not to offer a CPRE Program proposal.

<sup>42</sup> Until such time as the GSA Tranche Weighted Average Price becomes known, the Companies’ 5-year forecasted avoided cost will also serve as the GSA Bill Credit for GSA Customers who execute 20-year Self-Supply option GSA Service Agreements.

<sup>43</sup> Public Staff Initial Comments, at 10.

preliminarily modeled by the utility for grid impacts, as well as potential network upgrades required and associated costs, as of the time that the GSA Customer and GSA Renewable Supplier submit an application and subscribe for limited GSA Program capacity that could otherwise be allocated to another Eligible GSA Customer. This requirement was not “arbitrary” as NCSEA suggests,<sup>44</sup> because completion of this initial step in the interconnection study process would limit the risk of Renewable Suppliers offering projects that are not yet known to be reasonably cost-effective compared to the Unbundled Self-Supply PPA Price for which the Renewable Suppliers will be eligible under the Self-Supply option. The Companies did not similarly require a renewable energy facility bidding into the CPRE Program to have also completed system impact study because grid impacts are evaluated for the competitive portfolio of projects through the CPRE RFP evaluation process. This evaluation during CPRE is generally comparable to the proposed eligibility requirement that GSA Facilities participating under the Self-Supply option have a completed system impact study at the time of the customer’s application submission.

Notwithstanding the above considerations, the Companies are modifying the GSA Program design to address the Public Staff’s comment by eliminating the requirement that Self-Supply GSA Renewable Facilities must have completed a system impact study before submission of a GSA Customer application.

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<sup>44</sup> NCSEA Initial Comments, at 9.

#### **IV. The Self-Supply Option Also Satisfies the Requirements of the GSA Program Statute.**

While the Public Staff expresses “general[] support [for] the structure of Duke’s Self Supply option,”<sup>45</sup> the Staff, NCCEBA, and NCSEA express concern regarding certain aspects of the enrollment process. Below the Companies respond to these issues.

First, in response to NCCEBA’s claim that the Self-Supply option “would prevent GSA Customers and renewable energy suppliers from consummating transactions outside of the CPRE program timeline” and NCSEA’s similar suggestion that the GSA Program “artificially restrict[s] the times at which eligible participants may enroll in its proposed GSA program,” the Companies note that these issues stem from a misreading of the GSA Program’s design and, once clarified, resolve the concerns. As proposed by the Companies, the initial “enrollment window” for Eligible GSA Customers to apply to reserve capacity under both the initial GSA Standard Offer and the Self-Supply option is planned to open January 1, 2019, as depicted in Figure 1 of the Petition.<sup>46</sup> Once enrollment begins, the Self-Supply option remains continuously open for enrollments for the duration of the five-year GSA Program implementation period.<sup>47</sup> The enrollment windows shown in Figure 1 of the Petition are delineated only to identify that the applicable GSA Bill Credit would be calculated according to each newly-established CPRE (now GSA) Tranche Average Weighted Price, depending on the relative timing of the customer’s application to the CPRE RFP process.<sup>48</sup> In other words, the participation restrictions perceived by NCCEBA and NCSEA do not exist.

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<sup>45</sup> Public Staff Initial Comments, at 4.

<sup>46</sup> Petition, at 9.

<sup>47</sup> *Id.*

<sup>48</sup> Petition, at 9, n. 8. The Petition and Rider GSA also address prioritization among both Standard Offer and Self-Supply Program applications to ensure Program capacity is assigned on a first-come, first-served basis, based on the date and time stamps on the customer’s application. *Id.*

Second, the Public Staff and NCCEBA comment that opening the enrollment window January 1, 2019, after the initial CPRE Tranche 1 Average Weighted price is known, “unduly delays implementation of the Program.”<sup>49</sup> By way of background, this timing was considered reasonable and appropriate to allow the Companies to put into place the proper administrative and technological support for the Program, to increase awareness of the Program among potential large nonresidential customers, as well as to allow the initial CPRE (now GSA) Tranche Weighted Average Price to be determined for purposes of setting the GSA Bill Credit applicable to both Standard Offer and Self-Supply Customers selecting a 20-year GSA Service Agreement (and for purposes of establishing the Unbundled Self-Supply PPA Price). Without first establishing the competitively-derived price of renewable energy, which the Public Staff recognizes would reflect the market-based price for renewable energy resources and may be an appropriate reference point for establishing the bill credit,<sup>50</sup> the Companies are left with only the utility’s administratively-established avoided cost as a benchmark to determine the GSA Bill Credit.

If the Commission finds that a January 2019 enrollment opening is an undue delay of opening the Program for enrollment, the Companies would support a limited Program modification to partially open the GSA Program more expeditiously to address these parties’ concerns. Specifically, the Companies would support opening a more immediate enrollment window 60 days after Program approval for shorter-term contracts that do not exceed 15 years. Under this approach, the Companies’ administratively-determined, forecasted 5-year avoided cost would serve as the GSA Bill Credit for all GSA Customers,

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<sup>49</sup> Public Staff Initial Comments, at 11; NCCEBA Initial Comments, at 15.

<sup>50</sup> Public Staff Initial Comments, at 12.



both those who select the Standard Offer and Self-Supply option, who enter into GSA Service Agreements, regardless of contract terms.<sup>51</sup> Notwithstanding this concession, the Companies continue to believe that reliance upon the competitively-determined GSA Tranche Weighted Average Price would more accurately reflect the true cost of incremental alternative renewable energy being procured over 20 years for nonparticipating customers under HB 589, and, therefore, reflects the most appropriate pricing mechanism for establishing the GSA Bill Credit over this period while also holding nonparticipating customers neutral, as required by N.C. Gen. Stat. § 62-159.2(e).

**V. The Companies Agree to Offer Additional 10- and 15-Year Contract Tenors.**

As noted in the Public Staff's Initial Comments, N.C. Gen. Stat. § 62-159.2(b) contains a directive that the "standard terms and conditions available to renewable energy suppliers shall provide a range of terms, between two years and 20 years, from which the participating customer may elect." The Companies' Petition explained how they proposed to implement this requirement by designing the GSA Program to offer GSA Service Agreement terms under both the Standard Offer and Self-Supply options consistent with the competitive procurement process framework and shorter administratively-calculated forecasted avoided cost terms now mandated in HB 589.<sup>52</sup> The Standard Offer option provides the same 20-year term for purposes of efficiently leveraging the CPRE RFP process, which includes a single 20-year procurement term, pursuant to N.C. Gen. Stat. § 62-110.8(b)(3). The Companies also attempted to provide greater flexibility to Self-Supply Customers by allowing them the option of entering into 2-year and 5-year GSA Service

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<sup>51</sup> The only exception to this provision would be that the GSA Bill Credit for customers entering into 2-year GSA Service Agreements would still be set based upon DEC's or DEP's 2-year avoided cost rates.

<sup>52</sup> Petition, at 15, ¶ 26.

Agreements in addition to the 20-year term, consistent with the framework set forth in N.C. Gen. Stat. § 62-156 for establishing a Commission-approved 2-year and 5-year avoided cost rate applicable to non-standard offer QF purchases.<sup>53</sup>

In response, the Public Staff recommends that additional contract tenors between 5 and 20 years should be made available to Program customers,<sup>54</sup> and the GSA Customer Groups, including Apple/Google,<sup>55</sup> UNC,<sup>56</sup> and Walmart<sup>57</sup> also advocate for further optionality in contract tenors, specifically proposing 10- and 15-year contract terms. The Companies have given thoughtful consideration to these proposals, and agree to modify the Rider GSA Self-Supply option to allow Eligible GSA Customers flexibility to select a 2-, 5-, 10-, 15-, or 20-year GSA Service Agreement term. To ensure that HB 589's policies in favor of competitive renewable energy procurement (and de-emphasis on longer-term forecasted avoided cost reliance) are respected, the Companies further propose that the GSA Bill Credit to be offered for the 5-, 10-, and 15-year GSA Service Agreements will be set as the lesser of the negotiated GSA PPA contract price or the 5-year administratively-determined avoided cost rate fixed for the full duration of the GSA Service Agreement. The GSA Bill Credits for customers electing to enroll in a 2-year GSA Service Agreement will be set at the lesser of the negotiated GSA PPA contract price or the Commission-approved 2-year forecasted avoided cost rate, while the 20-year GSA Bill Credit option will be the GSA Tranche Weighted Average Price (minus the GSA REC value, defined above for Standard Offer). DEC and DEP believe this Program modification represents a

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<sup>53</sup> N.C. Gen. Stat. § 62-156(b) and (c).

<sup>54</sup> Public Staff Initial Comments, at 14.

<sup>55</sup> Apple/Google Joint Initial Comments, at 4.

<sup>56</sup> UNC Initial Comments, at 4.

<sup>57</sup> Walmart Initial Comments, at 5-6.

reasonable change to the Program design to offer Eligible GSA Customers greater optionality, while adhering to N.C. Gen. Stat. § 62-159.2(e)'s requirement that nonparticipating customers be held neutral, as discussed in Section I above.

**VI. The Mechanics of the GSA Bill Credits and Charges Comply with the GSA Program Statute.**

Section V of the Companies' Petition describes the methodology used to determine the applicable GSA Bill Credit, which the GSA Customer receives on each monthly bill. This Bill Credit reflects the value of the current price of the renewable energy and capacity available to serve nonparticipating customers (who will be supplied by and pay for the energy and capacity generated by GSA Facilities), reduced by the value of the RECs paid for by and provided to the GSA Customer. Section VI of the Petition describes the Rider GSA rate design, including all components that will be shown on a participating GSA Customer's bill.

Two challenges have been raised by the GSA Customer Group- and Solar Developer Advocate-intervenors concerning the Program's compliance with N.C. Gen. Stat. § 62-159.2. First, SACE and NCCEBA allege that the Program does not allow GSA Customers to negotiate with renewable energy suppliers regarding price terms, as required by N.C. Gen. Stat. 62-159.2(b). As discussed above, DEC and DEP agree that the Standard Offer option is not designed to facilitate customers directly negotiating any of the price terms involved in the transaction; to the contrary, the Companies designed this participation track for customers who do not want to self-negotiate and self-contract for their renewable energy under the Program.

As recognized in the Public Staff's Initial Comments, however, the Self-Supply option fully empowers GSA Customers to "select the new renewable energy facility from

which the utility would procure energy and capacity and also allow[s] customers to negotiate directly with renewable energy suppliers regarding price terms, as called for in G.S. 62-159.2(b).” Indeed, SACE acknowledges in its comments that “the REC price in the Self-Supply option is based on a value negotiated between the GSA Customer and GSA Renewable Supplier.”<sup>58</sup> Through this independently-negotiated REC transaction, the GSA Customer and Renewable Supplier may negotiate any “All-In Negotiated Price” they like consistent with their mutual economic interests. This agreed-to All-In Negotiated Price will then cover the GSA Customer’s cost of energy, capacity and RECs, with the RECs being transferred directly from the Renewable Supplier to the Self-Supply Customer.<sup>59</sup> In order to ensure that nonparticipating customers are held neutral, however, the price paid to Renewable Suppliers through the GSA Product Charge and the GSA Bill Credits must be benchmarked against competitively-determined market prices. As discussed above, these benchmarks are most equitably and accurately established through shorter term avoided cost calculations or the 20-year GSA Tranche Weighted Average Prices, consistent with HB 589.

Second, SACE argues that the Companies’ GSA Program is little more than a REC-purchase program in that GSA Customers will continue to pay their regular retail rates in addition to a charge for RECs and an administrative charge, and therefore the Program fails to comply with Section 62-159.2(e).<sup>60</sup> This is incorrect. As discussed in Section VI and depicted in Figure 2 and Figure 3 of the Petition, the Companies’ GSA Program structure precisely tracks these requirements. The GSA Customer continues to pay its “normal retail

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<sup>58</sup> SACE Initial Comments, at 9.

<sup>59</sup> Petition, at 21, at ¶ 39.

<sup>60</sup> SACE Initial Comments, at 7.

bill.” In addition, the GSA Product Charge under both Program options meets the requirements of this Section by charging the GSA Customer for the total amount of renewable energy delivered to DEC or DEP by the designated GSA Facility during the prior billing month.<sup>61</sup> The utility pays the owner of the GSA Facility under the GSA PPA for the electricity delivered, and then pays the GSA Customer a Bill Credit for the energy delivered under the GSA PPA, at an amount to be determined by the Commission. Ultimately, it is true that the GSA Customer’s net costs of participating in the GSA Program are limited to the Program administrative cost and the cost of RECs assigned to the GSA Customer. However, this approach to the GSA rate design fully conforms to the requirements of the GSA Program Statute.

**VII. Other Features of the GSA Program’s Design are Reasonable Means to Meet the Objectives of the GSA Program Statute and Not “Unlawful.”**

Some intervenors assert that features of the Companies’ proposed GSA Program design are “unlawful” and violate N.C. Gen. Stat. § 62-159.2 simply because these provisions, requirements, and/or specifications are not explicitly addressed in the GSA Program Statute. While the Companies recognize that the GSA Program must – and does – meet the express requirements of the GSA Program Statute, intervenors misunderstand and unreasonably limit the Commission’s broad regulatory authority to supervise and approve the Companies’ rates and tariffs and to implement legislative enactments under the Public Utilities Act.<sup>62</sup> Put another way, the General Assembly creates a legislative

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<sup>61</sup> Petition, at 19-21, ¶¶ 33, 38.

<sup>62</sup> See, e.g., N.C. Gen. Stat. § 62-2, -23, -30, 31, and 32, which grant the Commission broad regulatory powers, including general supervisory authority over the rates, charges and services rendered by the public utilities. The Commission’s broad regulatory powers and discretionary authority includes approval of standards, specifications, and/or requirements related to tariffs for electric service that are not expressly stated in the Public Utilities Act. See, e.g., *State ex rel. Utilities Comm’n v. Piedmont Nat. Gas Co.*, 346 N.C. 558, 575, 488 S.E.2d 591, 602 (1997).

framework to achieve a desired public policy, which the Companies must then implement (subject to Commission oversight) by designing more detailed program tariffs that take into consideration myriad safety, reliability, administrative, operational, technological, public relations, legal, regulatory, and other concerns. A utility program submitted for Commission approval thus must address and satisfy both express requirements established by the Legislature and additional regulatory needs and objectives that are not inconsistent with – and will ensure the full realization of – the General Assembly’s expressed direction and intent.

***Allocation of Unreserved Program Capacity.*** NCCEBA posits that nothing in the GSA Program Statute expressly allows DEC and DEP to allocate unreserved Program capacity between their service territories,<sup>63</sup> and thus argues that the Companies’ proposal to do so must be rejected. Yet, it is equally true that nothing prohibits this proposal. The Companies’ GSA Program reasonably allocates unreserved capacity based upon the load ratio share between DEC and DEP, and is designed to provide an equitable allocation of the aggregate unreserved Program capacity to allow fair participation opportunities for customers served by both utilities.<sup>64</sup> Notably, the Public Staff does not take exception to this requirement.<sup>65</sup>

***Siting of GSA Facilities.*** While the Public Staff also supports the Companies’ proposed requirement that both the Program Customer and the GSA Facility from which the utility procures energy and capacity on the customer’s behalf be located in the same DEC or DEP service territory,<sup>66</sup> NCSEA claims that the statute provides no support for this

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<sup>63</sup> NCCEBA Initial Comments, at 15.

<sup>64</sup> Public Staff Initial Comments, at 15-16.

<sup>65</sup> Public Staff Initial Comments, at 15.

<sup>66</sup> Public Staff Initial Comments, at 16.

Program design requirement.<sup>67</sup> Again, nothing in the GSA Program Statute prohibits this reasonable requirement, which reflects the reality that DEC and DEP independently administer GSA Programs under their separate GSA Tariffs and are independently responsible for procuring energy and capacity to serve native load customers within their respective service territories. Allowing GSA Facilities to be located outside of the utility's service territory could create additional delivery costs to wheel the power as well as administrative challenges to implement the GSA Programs. This is because each utility establishes independent GSA Product Charges (applicable to its GSA Customers) and GSA Bill Credits (to be recovered through the fuel factor from nonparticipating customers).

NCSEA also challenges siting of GSA Facilities in South Carolina.<sup>68</sup> However, the Companies' GSA Tariffs recognize that GSA Facilities sited within DEC's or DEP's respective service territories in South Carolina are delivering renewable power directly to the DEC or DEP distribution and/or transmission grids. If a GSA Customer desires to negotiate with a GSA Facility interconnected with DEC or DEP in South Carolina, allowing this optionality is neither unreasonable nor inconsistent with the "direct renewable energy procurement" Program framework set forth in N.C. Gen. Stat. § 62-159.2, given that unbundled energy from GSA Facilities will ultimately serve DEC and DEP's customers in both North Carolina and South Carolina. Each of these requirements represent reasonable and prudent aspects of the Companies' GSA Program design that are consistent with the overarching framework and legislative intent established by N.C. Gen. Stat. § 62-159.2 and should be approved.

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<sup>67</sup> NCSEA Initial Comments, at 10.

<sup>68</sup> *Id.*

**Consistency with CPRE Program.** The Companies also disagree with arguments claiming that aspects of the Companies' GSA Program framework are unlawful or unreasonable because the GSA Program Statute does not enumerate the same programmatic details that are expressly established for the CPRE Program in N.C. Gen. Stat. § 62-110.8. For example, NCSEA objects to permitting the Companies to construct, own and operate GSA Facilities that would be eligible to participate in the GSA Program, arguing that this option is only expressly enumerated in the CPRE Program Statute (and absent from the GSA Program Statute).<sup>69</sup> Nothing in the GSA Program Statute prohibits or otherwise limits DEC and DEP from offering GSA Facilities to Eligible GSA Customers, however, and, to the contrary, subsection (e) identifies that "renewable energy and capacity [may be] procured by *or provided by* the electric public utility for the benefit of the program customer . . . ." N.C. Gen. Stat. § 62-159.2(e) (emphasis added). Accepting NCSEA's position would effectively require the Commission to ignore this express language recognizing that DEC or DEP can "provide" renewable energy for the benefit of GSA Customers (as opposed to procuring it from another renewable energy supplier). Further, the Companies note that N.C. Gen. Stat. § 62-110.8(b) is necessarily more prescriptive, as the CPRE Program also includes an express 30% limitation on utility-ownership of CPRE Program capacity, which the GSA Program does not. Tellingly, the Public Staff agrees with the Companies that "the statute does not prohibit the utility from satisfying the voluntary procurement through utility-owned resources."<sup>70</sup>

**Dispatch and Control Rights.** Finally, the Public Staff has challenged the Companies' inclusion of dispatch and control instructions provisions in the proposed GSA

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<sup>69</sup> NCSEA Initial Comments, at 10-11.

<sup>70</sup> Public Staff Initial Comments, at 6.



PPA that are consistent with the dispatch and control rights included in the *pro forma* CPRE Program PPA. The Public Staff suggests that while N.C. Gen. Stat. § 62-110.8(b) expressly provides that third-party renewable energy suppliers must agree to allow the Companies to dispatch, operate and control the CPRE facility in the same manner as the utility's own generation,<sup>71</sup> that same express language was not included in N.C. Gen. Stat. § 62-159.2. Again, nothing precludes the Companies from requiring similar control instructions in the GSA PPA, particularly, where it is reasonable and appropriate for Program functionality and provides the Companies and ultimately their customers with system operational benefits of more effectively dispatching and controlling GSA Facilities as growing levels of solar generation are installed on the DEP and DEC systems.

Including comparable dispatch and control rights within the GSA and CPRE PPAs also comports with the manner in which the GSA Program Statute mandates the transition of unsubscribed GSA Program capacity to the CPRE Program at the conclusion of the five-year Program implementation period.<sup>72</sup> See N.C. Gen. Stat. § 62-159.2(d). For example, if only 500 MW of GSA Program capacity is directly procured by Eligible GSA Customers during the Program implementation period, then the remaining 100 MW would be procured through the CPRE Program, including conforming to the CPRE Program's mandatory dispatch and control requirements. Not requiring equivalent PPA terms and conditions for this remaining 100 MW – whether procured through the GSA Program or the CPRE Program – would be unreasonable and would also be less favorable for the Companies' customers from a system reliability perspective. Accordingly, the Public Staff's and other

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<sup>71</sup> Petition, at 15, ¶ 26, n. 15.

<sup>72</sup> See N.C. Gen. Stat. § 62-159.2(d).

parties' arguments in this regard should be rejected, and the Companies' consistent approach to control instructions in the GSA and CPRE PPAs approved.

**VIII. The Companies are Filing the GSA Services Agreement and Self-Supply Term Sheets for the GSA Program.**

Consistent with the GSA Program Statute's requirement that each utility's petition for program approval "provide standard contract terms and conditions for participating customers and for renewable energy suppliers,"<sup>73</sup> the Companies proposed detailed Rider GSA Tariffs, which contain the material standard contract terms and conditions for Eligible GSA Customers and Renewable Suppliers considering participation in the Program. *See* Petition, Attachment A. The Rider GSA Tariffs include standard terms and conditions addressing Program eligibility, the transfer of environmental attributes, early termination, the GSA PPA's terms and rates, the application and enrollment processes, required administrative fees, and the GSA Service Agreement, among other aspects of the Program. The Companies also submitted a chart explaining the GSA rate design applicable to participating customers and renewable energy suppliers as Attachment C to the Petition. The Companies' Petition was filed in good faith compliance pursuant to the Companies' understanding of the statutory requirements by providing these standard terms and conditions both in the text of the Petition, as well as in the Rider GSA Tariffs, and summary documents attached to the Petition.<sup>74</sup>

Although the GSA Program Statute does not include an express requirement that *pro forma* contract documents be submitted to the Commission for approval, the initial

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<sup>73</sup> N.C. Gen. Stat. § 62-159.2(b).

<sup>74</sup> It was also deemed unnecessary to attach the *pro forma* GSA PPAs to the Petition, given that its commercial terms were understood at the time to be the same in all material respects as the PPA filed with the Commission for approval as part of the CPRE Program. Petition, at 15, n. 15.

comments filed by other parties to this proceeding indicate a preference for Commission review of the Companies' Program documents in this proceeding. To alleviate these concerns and narrow the issues in this docket, DEC and DEP have agreed to submit the Program documents identified in the Petition. Attached to these Reply Comments are the revised proposed Rider GSA Tariffs, in clean and blackline format (Attachment A), proposed GSA Service Agreements (Attachment B),<sup>75</sup> and proposed GSA Term Sheet (Attachment C),<sup>76</sup> which will memorialize a Self-Supply Renewable Supplier's commitment to enter into a *pro forma* GSA PPA (Attachments A-C, collectively, the "Program Documents"). As discussed in the Petition, the commercial terms of the GSA PPA will be materially the same as the PPA filed with the Commission for approval as part of the CPRE Program, with the exception that the transfer of renewable energy attributes and RECs will be eliminated from the PPA under the Self-Supply option.<sup>77</sup>

While the Companies are submitting the Program Documents for consideration by the Commission, DEC and DEP also note DOD/FEA's Initial Comments, which highlight the federal government's need for flexibility in modifying standard contracts in order to harmonize such contracts with the Federal Acquisitions Regulations and Defense Federal Acquisitions Regulations.<sup>78</sup> The Companies thus offer these Agreements with the understanding that they are *pro forma* and can be adapted to accommodate reasonable changes according to Eligible GSA Customers' specific needs.

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<sup>75</sup> The Standard Offer and Self-Supply GSA Service Agreements are described in detail in the Petition, at 13-14, at ¶¶ 22-24.

<sup>76</sup> This is a standard form term sheet to be executed and attached to the Self-Supply Customer Application, as discussed in Section III of the Petition. Petition, at 12, at ¶ 20.

<sup>77</sup> Public Staff Initial Comments, at 13.

<sup>78</sup> DOD/FEA Initial Comments, at 2.

**IX. The GSA Administrative Charge is Reasonable and Unambiguous in Application.**

In the Petition and GSA Tariffs, the Companies explained that the monthly GSA Administrative Charge is \$375 per Customer Account plus an additional \$50 per additional account billed. This Charge is intended to recover the Companies' costs incurred to support the GSA Program, including facilitating manual billing, Program management, and related labor and administrative and technology support costs.<sup>79</sup> While the Public Staff does not take exception with the GSA Administrative Charge,<sup>80</sup> Walmart suggests that there is some uncertainty regarding how the GSA Administrative Charge will be applied where a customer's multiple accounts participate in the Program on an aggregated basis because the capitalized term "Customer Account" is undefined in the proposed tariffs.<sup>81</sup> If a GSA Customer has multiple aggregated accounts participating and being billed on Riders GSA, one of its accounts will be deemed the primary Customer Account for Program participation, and each additional account that is aggregated with this primary account would be charged the additional \$50 per account as part of the monthly GSA Administrative Charge. Accordingly, if a Customer has three accounts aggregating to participate in the Program, its monthly GSA Administrative Charge would be \$475. DEC and DEP continue to support the \$375 plus \$50 per additional account monthly charge as reasonable for the array of administrative services that will be provided by the Companies in order to operate the GSA Program. No changes to the GSA Tariffs are needed, and the Companies commit to work with Walmart and other interested Eligible GSA Customers to

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<sup>79</sup> Petition, at 23.

<sup>80</sup> Public Staff Initial Comments, at 15-16.

<sup>81</sup> Walmart Initial Comments, at 9-10.

ensure they have a clear understanding of the Administrative Charge and overall Program design.

**X. Conclusion**

WHEREFORE, based on the foregoing, the Companies respectfully request that the Commission accept these Reply Comments, approve the modifications to their GSA Program as described herein, and grant any other relief that the Commission deems appropriate.

Respectfully submitted, this the 20<sup>th</sup> day of April, 2018.

/s/E. Brett Breitschwerdt

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**Duke Energy Carolinas, LLC's and  
Duke Energy Progress, LLC's  
GREEN SOURCE ADVANTAGE PROGRAM  
REPLY COMMENTS**

**Attachment A**

**Duke Energy Carolinas, LLC's Revised Rider GSA (Clean and Blackline)  
Duke Energy Progress, LLC's Revised Rider GSA-1 (Clean and Blackline)**

Duke Energy Carolinas, LLC

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RIDER GSA  
GREEN SOURCE ADVANTAGE (NC)

AVAILABILITY

This Green Source Advantage Program (“GSA Program” or “Program”) is available, at the Company’s option, to nonresidential customers meeting the eligibility criteria specified herein and receiving concurrent service on another rate schedule, excluding service under outdoor lighting schedules, who elect to direct the Company to procure renewable energy on the Customer’s behalf pursuant to the terms of the GSA Program, as approved by the Commission. Eligibility for the Program is limited under N.C. Gen. Stat. § 62-159.2 to the University of North Carolina (“UNC”) system, major military installations, and nonresidential customers with a minimum Maximum Annual Peak Demand of 1,000 kW or an aggregated Maximum Annual Peak Demand at multiple service locations of 5,000 kW (collectively, “Eligible GSA Customers”). The Program is also limited to a combined total of 600 MW of renewable energy facilities between the Duke Energy Carolinas and Duke Energy Progress service territories (“Maximum GSA Program Capacity”). Of the 600 MW of Maximum GSA Program Capacity available under the Program, 250 MW shall be reserved exclusively for use by the UNC system, and 100 MW shall be reserved exclusively for use by major military installations in North Carolina (together, the “Reserved Capacity”). Of the remaining 250 MW, 160 MW shall be reserved for use by eligible Duke Energy Carolinas customers, and 90 MW shall be reserved for use by eligible Duke Energy Progress customers. Any Reserved Capacity that is not subscribed by the UNC system or major military installations, as applicable, within the three-year Reserved Capacity period following initial Program approval of [Date] shall then be made available for subscription by any Eligible GSA Customer. This Rider and the Program shall remain open to Eligible GSA Customers pursuant to the Program’s terms and conditions, as approved by the Commission, for a period of five years following initial Program approval of [Date].

DIRECTED PROCUREMENT OF GSA FACILITIES

The Program allows Eligible GSA Customers to direct the Company to procure renewable energy and allows the Customer to obtain the renewable energy certificates (“RECs”) generated by a GSA Facility or portfolio of GSA Facilities (“GSA Facility(ies)”). A GSA Facility must be a new renewable energy facility located in the Company’s service territory in either North Carolina or South Carolina with supply that will be dedicated to the Program by the GSA Facility’s owner (“Renewable Supplier”).

Customers seeking to participate in the Program shall have the option to either request the Company to develop or competitively procure a GSA Facility(ies) to meet the Customers’ requirements (the “Standard Offer option”) or identify and propose to the Company a GSA Facility(ies) offered by a Renewable Supplier (the “Self-Supply option”). Under both the Standard Offer option and the Self-Supply option, the Renewable Supplier will enter into a power purchase agreement (“GSA PPA”) with the Company to supply the desired renewable energy.

If the Customer requests the Standard Offer option, the Company will select a GSA Facility(ies) through the Company’s independently-administered competitive procurement of renewable energy program (“CPRE Program”) request for proposal (“RFP”) process. Under the Self-Supply option, the Customer can choose to either have the Company meet the requirement from one or more Company-developed GSA Facilities with supply that will be dedicated to serving the Program or negotiate price terms directly with a Renewable Supplier.

Under the Standard Offer option, the GSA Standard Offer product procured by the Company will be the same as the CPRE Program product in all material respects, and shall include renewable energy, capacity, and RECs. Under the Self-Supply option, the Company will procure an unbundled renewable energy product from a Renewable Supplier, which shall include delivery of energy and capacity only, without transfer of the RECs generated by the GSA Facility(ies) to the Company. As described below, under the Self-Supply option, the Renewable Supplier shall transfer RECs directly to the Self-Supply Customer through a separate contractual arrangement.

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APPLICATION PROCESS AND GSA SERVICE AGREEMENT

To participate in the GSA Program, a Customer must submit an application to the Company during a GSA Program enrollment window, as described on the Company's Program website, requesting an annual amount of renewable capacity to be developed or procured on the Customer's behalf. The Customer may apply for the Company to procure renewable generation capacity up to 125% of the Customer's aggregate Maximum Annual Peak Demand at eligible Customer service location(s) within the Company's North Carolina service territory.

The Customer's application will designate whether the Customer is requesting the Company develop a GSA Facility or whether the Customer is electing to participate under the Standard Offer option or the Self-Supply option. The application shall also identify the requested contract term for the Customer's enrollment in the Program, which shall be twenty years, if the Customer elects the Standard Offer option and may be two, five, ten, fifteen, or twenty years, if the Customer elects the Self-Supply option. All Customer applications shall be accompanied by the payment of a \$2,000 nonrefundable application fee. Program reservations will be accepted on a "first-come-first-served" basis based upon the date and time of receipt of the Customer's completed application and application fee. Subsequent applications will be held until earlier applications are resolved and will not be rejected until the Company's Maximum GSA Program Capacity is satisfied. The \$2,000 application fee will be refunded to the Customer only in the event that the Customer's application is rejected due to insufficient GSA Program Capacity.

A Self-Supply Customer submitting an application shall also be required to deliver, at the time of application, a standard-form term sheet executed by the Customer and Renewable Supplier, which shall identify the Renewable Supplier and provide information about the proposed GSA Facility and other information as requested by the Company and identified in the term sheet. In addition, the Renewable Supplier must also provide, at the time of the application, a capacity reservation bond in an amount to be determined by the Company in accordance with the methodology used in the CPRE Program.

Upon review of the Customer's application and after completion of the CPRE RFP, including procurement of Standard Offer GSA Capacity, the Company will inform the Customer of the applicable "GSA Bill Credit." The GSA Bill Credit for Self-Supply Customers that execute 2-year GSA Service Agreements will be set at the lesser of the negotiated GSA PPA contract price or the 2-year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full duration of the GSA Service Agreement. For Self-Supply Customers that select either 5-, 10-, or 15-year contract terms, the GSA Bill Credit will be set at the lesser of the negotiated GSA PPA contract price or the 5-year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full duration of the GSA Service Agreement. The GSA Bill Credit for both Standard Offer and Self-Supply Customers who elect a 20-year GSA Service Agreement term will be equal to the capacity-weighted average of the awarded Standard Offer GSA Capacity procured through the applicable tranche of the CPRE RFP Solicitation (the "GSA Tranche Weighted Average Price") minus the GSA REC Value, as defined below. Until such time as the GSA Tranche Weighted Average Price becomes known, the Companies' 5-year forecasted avoided cost will serve as the GSA Bill Credit for GSA Customers who enter into Self-Supply option 20-year GSA Service Agreements, for the full 20-year contract term.

The GSA Service Agreement shall include the general terms and conditions applicable under this Rider and shall specify the rates and charges applicable under the GSA Program for the contract term. The Customer must execute and return the GSA Service Agreement within 30 days of delivery by the Company and, in the case of Self-Supply option only, the Renewable Supplier must execute and return the GSA PPA within 30 days of delivery by the Company. Failure to timely execute and return the GSA Service Agreement will result in termination of the Customer's application and GSA capacity reservation, which would then require the Customer to start the Program enrollment process anew in order to participate in the Program.



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GSA PPA RATES AND TERMS

The GSA PPA delivered to a Renewable Supplier selected to provide a GSA Facility under the Standard Offer option shall be in substantially the same form as the PPA approved for the CPRE Program procurement, and shall include delivery of renewable energy, capacity, and RECs. The Standard Offer GSA PPA contract price shall be equal to the Renewable Supplier's proposal price, as bid into the CPRE RFP.

The GSA PPA delivered to a Renewable Supplier under the Self-Supply option shall also be in substantially the same form as the PPA approved for the CPRE Program procurement but shall exclude the transfer of RECs to the Company, as discussed above. The GSA PPA contract price for a twenty-year term shall be equal to the applicable GSA Tranche Weighted Average Price minus the GSA REC Value. The GSA PPA contract price in the case of a 2-, 5-, 10-, or 15-year term shall be the lesser of the Company's avoided cost rate or the GSA PPA rate (excluding RECs) negotiated between the Renewable Supplier and the Customer.

RENEWABLE ENERGY CREDITS

For Standard Offer Customers, the value of the RECs will be equal to a market index based "GSA REC Value," as determined by the Company and published on the Company's website prior to each enrollment period. All RECs provided by the Company pursuant to the GSA Service Agreement will be managed by the Company through the North Carolina Renewable Energy Tracking System ("NC RETS") and transferred annually to a NC RETS account designated by the GSA Customer upon receipt of payment in full under the GSA Service Agreement for such annual period.

For Self-Supply Customers, the value of RECs may be negotiated and agreed to through a REC purchase agreement solely between the Customer and the Renewable Supplier ("REC Agreement"). The Customer may acquire RECs directly from the Renewable Supplier; however, in no event shall the Company be responsible for procuring, managing, reporting, retiring, delivering, or transferring RECs to the Customer, and the Company shall bear no liability to the Customer for the failure of the Renewable Supplier to perform its obligations under the applicable REC Agreement.

Any obligation or agreement by the Company to supply RECs under this Rider shall be terminated if the Renewable Supplier defaults on the GSA PPA or fails to deliver the contracted renewable generation to the Company.

MONTHLY RATE

An amount computed under the GSA Customer's primary rate schedule and any other applicable riders with which this Rider is used plus the sum of the following amounts:

1. GSA Product Charge – the energy produced by the GSA Facility in the prior billing month times the fixed rate for purchased power from the Renewable Supplier specified in the GSA Service Agreement
2. GSA Bill Credit – the energy produced by the GSA Facility in the prior billing month times the fixed GSA Bill Credit rate specified in the GSA Service Agreement
3. GSA Administrative Charge – the applicable monthly administrative charge shall be \$375 per Customer Account, plus an additional \$50 charge per additional account billed

GENERAL PROVISIONS

The Customer shall provide security as required in the GSA Service Agreement. For the avoidance of doubt, the Company shall not be liable to the Customer in the event that a GSA Facility fails to produce renewable energy as

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required under a GSA PPA or otherwise consistent with the Customer's expectations. The Company shall also have no liability under any REC Agreement between the Customer and the Renewable Supplier.

If the Customer requests termination of the GSA Service Agreement, or defaults on the GSA Service Agreement before the expiration of the term of the GSA Service Agreement, the Customer shall pay to the Company an early termination charge as determined under the GSA Service Agreement. Such termination charge may be adjusted if and to the extent a successor customer requests service under this Rider and fully assumes the obligation for the purchase of renewable energy prior to the effective date of the contract termination; provided, however, Company will not utilize or change utilization of its assets and positions to minimize Customer's costs due to such early termination. If the Renewable Supplier defaults on the GSA PPA, the Company will terminate the Customer's GSA Service Agreement with no further liability on the part of either party except for those liabilities accruing prior to default by the Renewable Supplier under the GSA PPA.

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NCUC Docket No. E-7, Sub 1169  
Order dated \_\_\_\_\_

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AVAILABILITY

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Customers seeking to participate in the Program shall have the option to either request ~~Duke Energy Carolinas~~ the Company to develop or competitively procure a GSA Facility(ies) to meet the ~~Customer’s~~ Customers’ requirements (the “Standard Offer option”) or identify and propose to the Company a GSA Facility(ies) offered by a Renewable Supplier (the “Self-Supply option”). Under both the Standard Offer option and the Self-Supply option, the Renewable Supplier will enter into a power purchase agreement (“GSA PPA”) with the Company to supply the desired renewable energy.

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Under the Standard Offer option, the GSA Standard Offer product procured by the Company will be the same as the CPRE Program product in all material respects, and shall include renewable energy, capacity, and RECs. Under the Self-Supply option, the Company will procure an unbundled renewable energy product from a Renewable Supplier, which shall include delivery of energy and capacity only, without transfer of the RECs generated by the GSA

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Facility(ies) to the Company. As described below, under the Self-Supply option, the Renewable Supplier shall transfer RECs directly to the Self-Supply Customer through a separate contractual arrangement.

#### APPLICATION PROCESS AND GSA SERVICE AGREEMENT

To participate in the GSA Program, a Customer must submit an application to the Company during a GSA Program enrollment window, as ~~prescribed~~**described** on the Company's Program website, requesting an annual amount of renewable capacity to be developed or procured on the Customer's behalf. The Customer may apply for the Company to procure renewable generation capacity up to 125% of the Customer's aggregate Maximum Annual Peak Demand at eligible Customer service location(s) within ~~Duke Energy Carolinas'~~**the Company's** North Carolina service territory.

The Customer's application will designate whether the Customer is requesting the Company develop a GSA Facility or whether the Customer is electing to participate under the Standard Offer option or the Self-Supply option. The application shall also identify the requested contract term for the Customer's enrollment in the Program, which shall be twenty years, if the Customer elects the Standard Offer option and may be two, five, ~~ten, fifteen,~~ or twenty years, if the Customer elects the Self-Supply option. All Customer applications shall be accompanied by the payment of a \$2,000 nonrefundable application fee. Program reservations will be accepted on a "first-come-first-served" basis based upon the date and time of receipt of the Customer's completed application and application fee. Subsequent applications will be held until earlier applications are resolved and will not be rejected until the Company's Maximum GSA Program Capacity is satisfied. The \$2,000 application fee will be refunded to the Customer only in the event that the Customer's application is rejected due to insufficient GSA Program Capacity.

A Self-Supply Customer submitting an application shall also be required to deliver, at the time of application, a standard-form term sheet executed by the Customer and Renewable Supplier, which shall identify the Renewable Supplier and provide information about the proposed GSA Facility and other information as requested by the Company and identified in the term sheet. In addition, the Renewable Supplier must also provide, at the time of the application, a capacity reservation bond in an amount to be determined by the Company in accordance with the methodology used in the CPRE Program.

Upon review of the Customer's application and after completion of the CPRE RFP, including procurement of Standard Offer GSA Capacity, the Company will inform the Customer of the applicable "GSA Bill Credit." **The GSA Bill Credit for Self-Supply Customers that execute 2-year GSA Service Agreements will be set at the lesser of the negotiated GSA PPA contract price or the 2-year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full duration of the GSA Service Agreement. For Self-Supply Customers that select either 5-, 10-, or 15-year contract terms, the GSA Bill Credit will be set at the lesser of the negotiated GSA PPA contract price or the 5-year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full duration of the GSA Service Agreement.** The GSA Bill Credit for both Standard Offer and Self-Supply Customers **who elect a 20-year GSA Service Agreement term** will be equal to the capacity-weighted average of the awarded CPRE RFP bids (for both CPRE and GSA Program supply) **Standard Offer GSA Capacity procured through the applicable tranche of the CPRE RFP Solicitation (the "GSA Tranche Weighted Average Price")** minus the GSA REC Value, as defined below. ~~The GSA Bill Credit may not exceed the forecasted avoided cost rate over the term of the contract calculated by Duke Energy Carolinas based upon the methodology approved by the Commission.~~ **Until such time as the GSA Tranche Weighted Average Price becomes known, the Companies'**

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Electricity No. 4

North Carolina (Proposed) Original Leaf 145  
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**5-year forecasted avoided cost will serve as the GSA Bill Credit for GSA Customers who enter into Self-Supply option 20-year GSA Service Agreements, for the full 20-year contract term.**

The GSA Service Agreement shall include the general terms and conditions applicable under this Rider and shall specify the rates and charges applicable under the GSA Program for the contract term. The Customer must execute and return the GSA Service Agreement within 30 days of delivery by the Company and, in the case of Self-Supply option only, the Renewable Supplier must execute and return the GSA PPA within 30 days of delivery by the Company. Failure to timely execute and return the GSA Service Agreement will result in termination of the Customer's application and GSA capacity reservation, which would then require the Customer to start the Program enrollment process anew in order to participate in the Program.

**GSA PPA RATES AND TERMS**

The GSA PPA delivered to a Renewable Supplier selected to provide a GSA Facility under the Standard Offer option shall be in substantially the same form as the PPA approved for the CPRE Program procurement, and shall include delivery of renewable energy, capacity, and RECs. The Standard Offer GSA PPA contract price shall be equal to the Renewable Supplier's proposal price, as bid into the CPRE RFP.

The GSA PPA delivered to a Renewable Supplier under the Self-Supply option shall also be in substantially the same form as the PPA approved for the CPRE Program procurement but shall exclude the transfer of RECs to the Company, as discussed above. The GSA PPA contract price for a twenty-year term shall be equal to the ~~capacity weighted average of all proposals selected through the combined CPRE and GSA RFP~~ **applicable GSA Tranche Weighted Average Price** minus the GSA REC Value. The GSA PPA contract price in the case of a ~~two 2-, 5-, 10-, or five 15--~~ year term shall be the lesser of the Company's avoided cost rate or the GSA PPA rate (excluding RECs) negotiated between the Renewable Supplier and the Customer.

**RENEWABLE ENERGY CREDITS**

For Standard Offer Customers, the value of the RECs will be equal to a market index based "GSA REC Value," as determined by the Company and published on the Company's website prior to each enrollment period. All RECs provided by the Company pursuant to the GSA Service Agreement will be managed by the Company through the North Carolina Renewable Energy Tracking System ("NC RETS") and transferred annually to a NC RETS account designated by the GSA Customer upon receipt of payment in full under the GSA Service Agreement for such annual period.

For Self-Supply Customers, the value of RECs ~~shall may~~ be negotiated and agreed to through a REC purchase agreement **solely** between the Customer and the Renewable Supplier ("REC Agreement"). The Customer ~~shall may~~ acquire the RECs directly from the Renewable Supplier, and the GSA Service Agreement shall include an attestation by the Customer that the RECs generated by the designated GSA Facility will be transferred by the Renewable Supplier to the NC RETS account identified by the GSA Customer. The Company shall not; **however, in no event shall the Company** be responsible for procuring, **managing, reporting, retiring,** delivering, or transferring RECs to the Customer, and **the Company** shall bear no liability to the Customer for the failure of the Renewable Supplier to perform its obligations under the applicable REC Agreement.

Any obligation or agreement by the Company to supply RECs under this Rider shall be terminated if the Renewable Supplier defaults on the GSA PPA or fails to deliver the contracted renewable generation to the Company.

**MONTHLY RATE**

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An amount computed under the GSA Customer's primary rate schedule and any other applicable riders with which this Rider is used plus the sum of the following amounts:

1. GSA Product Charge – the energy produced by the GSA Facility in the prior billing month times the fixed rate for purchased power from the Renewable Supplier specified in the GSA Service Agreement
2. GSA Bill Credit – the energy produced by the GSA Facility in the prior billing month times the fixed GSA Bill Credit rate specified in the GSA Service Agreement
3. GSA Administrative Charge – the applicable monthly administrative charge shall be \$375 per Customer Account, plus an additional \$50 charge per additional account billed

GENERAL PROVISIONS

The Customer shall provide security as required in the GSA Service Agreement. For the avoidance of doubt, the Company shall not be liable to the Customer in the event that a GSA Facility fails to produce renewable energy as required under a GSA PPA or otherwise consistent with the Customer's expectations. The Company shall also have no liability under any REC Agreement between the Customer and the Renewable Supplier.

If the Customer requests termination of the GSA Service Agreement, or defaults on the GSA Service Agreement before the expiration of the term of the GSA Service Agreement, the Customer shall pay to the Company an early termination charge as determined under the GSA Service Agreement. Such termination charge may be adjusted if and to the extent a successor customer requests service under this Rider and fully assumes the obligation for the purchase of renewable energy prior to the effective date of the contract termination; provided, however, Company will not utilize or change utilization of its assets and positions to minimize Customer's costs due to such early termination. If the Renewable Supplier defaults on the GSA PPA, the Company will terminate the Customer's GSA Service Agreement with no further liability on the part of either party except for those liabilities accruing prior to default by the Renewable Supplier under the GSA PPA.



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AVAILABILITY

This Green Source Advantage Program (“GSA Program” or “Program”) is available, at the Company’s option, to nonresidential customers meeting the eligibility criteria specified herein and receiving concurrent service on another rate schedule, excluding service under outdoor lighting schedules, who elect to direct the Company to procure renewable energy on the Customer’s behalf pursuant to the terms of the GSA Program, as approved by the Commission. Eligibility for the Program is limited under N.C. Gen. Stat. § 62-159.2 to the University of North Carolina (“UNC”) system, major military installations, and nonresidential customers with a minimum Maximum Annual Peak Demand of 1,000 kW or an aggregated Maximum Annual Peak Demand at multiple service locations of 5,000 kW (collectively, “Eligible GSA Customers”). The Program is also limited to a combined total of 600 MW of renewable energy facilities between the Duke Energy Carolinas and Duke Energy Progress service territories (“Maximum GSA Program Capacity”). Of the 600 MW of Maximum GSA Program Capacity available under the Program, 250 MW shall be reserved exclusively for use by the UNC system, and 100 MW shall be reserved exclusively for use by major military installations in North Carolina (together, the “Reserved Capacity”). Of the remaining 250 MW, 160 MW shall be reserved for use by eligible Duke Energy Carolinas customers, and 90 MW shall be reserved for use by eligible Duke Energy Progress customers. Any Reserved Capacity that is not subscribed by the UNC system or major military installations, as applicable, within the three-year Reserved Capacity period following initial Program approval of [Date] shall then be made available for subscription by any Eligible GSA Customer. This Rider and the Program shall remain open to Eligible GSA Customers pursuant to the Program’s terms and conditions, as approved by the Commission, for a period of five years following initial Program approval of [Date].

DIRECTED PROCUREMENT OF GSA FACILITIES

The Program allows Eligible GSA Customers to direct the Company to procure renewable energy and allows the Customer to obtain the renewable energy certificates (“RECs”) generated by a GSA Facility or portfolio of GSA Facilities (“GSA Facility(ies)”). A GSA Facility must be a new renewable energy facility located in the Company’s service territory in either North Carolina or South Carolina with supply that will be dedicated to the Program by the GSA Facility’s owner (“Renewable Supplier”).

Customers seeking to participate in the Program shall have the option to either request the Company to develop or competitively procure a GSA Facility(ies) to meet the Customers’ requirements (the “Standard Offer option”) or identify and propose to the Company a GSA Facility(ies) offered by a Renewable Supplier (the “Self-Supply option”). Under both the Standard Offer option and the Self-Supply option, the Renewable Supplier will enter into a power purchase agreement (“GSA PPA”) with the Company to supply the desired renewable energy.

If the Customer requests the Standard Offer option, the Company will select a GSA Facility(ies) through the Company’s independently-administered competitive procurement of renewable energy program (“CPRE Program”) request for proposal (“RFP”) process. Under the Self-Supply option, the Customer can choose to either have the Company meet the requirement from one or more Company-developed GSA Facilities with supply that will be dedicated to serving the Program or negotiate price terms directly with a Renewable Supplier.

Under the Standard Offer option, the GSA Standard Offer product procured by the Company will be the same as the CPRE Program product in all material respects, and shall include renewable energy, capacity, and RECs. Under the Self-Supply option, the Company will procure an unbundled renewable energy product from a Renewable Supplier, which shall include delivery of energy and capacity only, without transfer of the RECs generated by the GSA Facility(ies) to the Company. As described below, under the Self-Supply option, the Renewable Supplier shall transfer RECs directly to the Self-Supply Customer through a separate contractual arrangement.

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APPLICATION PROCESS AND GSA SERVICE AGREEMENT

To participate in the GSA Program, a Customer must submit an application to the Company during a GSA Program enrollment window, as described on the Company's Program website, requesting an annual amount of renewable capacity to be developed or procured on the Customer's behalf. The Customer may apply for the Company to procure renewable generation capacity up to 125% of the Customer's aggregate Maximum Annual Peak Demand at eligible Customer service location(s) within the Company's North Carolina service territory.

The Customer's application will designate whether the Customer is requesting the Company develop a GSA Facility or whether the Customer is electing to participate under the Standard Offer option or the Self-Supply option. The application shall also identify the requested contract term for the Customer's enrollment in the Program, which shall be twenty years, if the Customer elects the Standard Offer option and may be two, five, ten, fifteen, or twenty years, if the Customer elects the Self-Supply option. All Customer applications shall be accompanied by the payment of a \$2,000 nonrefundable application fee. Program reservations will be accepted on a "first-come-first-served" basis based upon the date and time of receipt of the Customer's completed application and application fee. Subsequent applications will be held until earlier applications are resolved and will not be rejected until the Company's Maximum GSA Program Capacity is satisfied. The \$2,000 application fee will be refunded to the Customer only in the event that the Customer's application is rejected due to insufficient GSA Program Capacity.

A Self-Supply Customer submitting an application shall also be required to deliver, at the time of application, a standard-form term sheet executed by the Customer and Renewable Supplier, which shall identify the Renewable Supplier and provide information about the proposed GSA Facility and other information as requested by the Company and identified in the term sheet. In addition, the Renewable Supplier must also provide, at the time of the application, a capacity reservation bond in an amount to be determined by the Company in accordance with the methodology used in the CPRE Program.

Upon review of the Customer's application and after completion of the CPRE RFP, including procurement of Standard Offer GSA Capacity, the Company will inform the Customer of the applicable "GSA Bill Credit." The GSA Bill Credit for Self-Supply Customers that execute 2-year GSA Service Agreements will be set at the lesser of the negotiated GSA PPA contract price or the 2-year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full duration of the GSA Service Agreement. For Self-Supply Customers that select either 5-, 10-, or 15-year contract terms, the GSA Bill Credit will be set at the lesser of the negotiated GSA PPA contract price or the 5-year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full duration of the GSA Service Agreement. The GSA Bill Credit for both Standard Offer and Self-Supply Customers who elect a 20-year GSA Service Agreement term will be equal to the capacity-weighted average of the awarded Standard Offer GSA Capacity procured through the applicable tranche of the CPRE RFP Solicitation (the "GSA Tranche Weighted Average Price") minus the GSA REC Value, as defined below. Until such time as the GSA Tranche Weighted Average Price becomes known, the Companies' 5-year forecasted avoided cost will serve as the GSA Bill Credit for GSA Customers who enter into Self-Supply option 20-year GSA Service Agreements, for the full 20-year contract term.

The GSA Service Agreement shall include the general terms and conditions applicable under this Rider and shall specify the rates and charges applicable under the GSA Program for the contract term. The Customer must execute and return the GSA Service Agreement within 30 days of delivery by the Company and, in the case of Self-Supply option only, the Renewable Supplier must execute and return the GSA PPA within 30 days of delivery by the Company. Failure to timely execute and return the GSA Service Agreement will result in termination of the Customer's application and GSA capacity reservation, which would then require the Customer to start the Program enrollment process anew in order to participate in the Program.



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GSA PPA RATES AND TERMS

The GSA PPA delivered to a Renewable Supplier selected to provide a GSA Facility under the Standard Offer option shall be in substantially the same form as the PPA approved for the CPRE Program procurement, and shall include delivery of renewable energy, capacity, and RECs. The Standard Offer GSA PPA contract price shall be equal to the Renewable Supplier's proposal price, as bid into the CPRE RFP.

The GSA PPA delivered to a Renewable Supplier under the Self-Supply option shall also be in substantially the same form as the PPA approved for the CPRE Program procurement but shall exclude the transfer of RECs to the Company, as discussed above. The GSA PPA contract price for a twenty-year term shall be equal to the applicable GSA Tranche Weighted Average Price minus the GSA REC Value. The GSA PPA contract price in the case of a 2-, 5-, 10-, or 15-year term shall be the lesser of the Company's avoided cost rate or the GSA PPA rate (excluding RECs) negotiated between the Renewable Supplier and the Customer.

RENEWABLE ENERGY CREDITS

For Standard Offer Customers, the value of the RECs will be equal to a market index based "GSA REC Value," as determined by the Company and published on the Company's website prior to each enrollment period. All RECs transferred by the Company pursuant to the GSA Service Agreement will be managed by the Company through the North Carolina Renewable Energy Tracking System ("NC RETS") and transferred annually to a NC RETS account designated by the GSA Customer upon receipt of payment in full under the GSA Service Agreement for such annual period.

For Self-Supply Customers, the value of RECs may be negotiated and agreed to through a REC purchase agreement solely between the Customer and the Renewable Supplier ("REC Agreement"). The Customer may acquire RECs directly from the Renewable Supplier, however, in no event shall the Company be responsible for procuring, managing, reporting, retiring, delivering, or transferring RECs to the Customer, and the Company shall bear no liability to the Customer for the failure of the Renewable Supplier to perform its obligations under the applicable REC Agreement.

Any obligation or agreement by the Company to supply RECs under this Rider shall be terminated if the Renewable Supplier defaults on the GSA PPA or fails to deliver the contracted renewable generation to the Company.

MONTHLY RATE

An amount computed under the GSA Customer's primary rate schedule and any other applicable riders with which this Rider is used plus the sum of the following amounts:

1. GSA Product Charge – the energy produced by the GSA Facility in the prior billing month times the fixed rate for purchased power from the Renewable Supplier specified in the GSA Service Agreement
2. GSA Bill Credit – the energy produced by the GSA Facility in the prior billing month times the fixed GSA Bill Credit rate specified in the GSA Service Agreement
3. GSA Administrative Charge – the applicable monthly administrative charge shall be \$375 per Customer Account, plus an additional \$50 charge per additional account billed

GENERAL PROVISIONS

The Customer shall provide security as required in the GSA Service Agreement. For the avoidance of doubt, the Company shall not be liable to the Customer in the event that a GSA Facility fails to produce renewable energy as required under a GSA PPA or otherwise consistent with the Customer's expectations. The Company shall also have no liability under any REC Agreement between the Customer and the Renewable Supplier.

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If the Customer requests termination of the GSA Service Agreement, or defaults on the GSA Service Agreement before the expiration of the term of the GSA Service Agreement, the Customer shall pay to the Company an early termination charge as determined under the GSA Service Agreement. Such termination charge may be adjusted if and to the extent a successor customer requests service under this Rider and fully assumes the obligation for the purchase of renewable energy prior to the effective date of the contract termination; provided, however, Company will not utilize or change utilization of its assets and positions to minimize Customer's costs due to such early termination. If the Renewable Supplier defaults on the GSA PPA, the Company will terminate the Customer's GSA Service Agreement with no further liability on the part of either party except for those liabilities accruing prior to default by the Renewable Supplier under the GSA PPA.

Effective for service rendered on and after (Date)  
NCUC Docket No. E-2, Sub 1170

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AVAILABILITY

This Green Source Advantage Program (“GSA Program” or “Program”) is available, at the Company’s option, to nonresidential customers meeting the eligibility criteria specified herein and receiving concurrent service on another rate schedule, excluding service under outdoor lighting schedules, who elect to direct the Company to procure renewable energy on the Customer’s behalf pursuant to the terms of the GSA Program, as approved by the Commission. Eligibility for the Program is limited under N.C. Gen. Stat. § 62-159.2 to the University of North Carolina (“UNC”) system, major military installations, and nonresidential customers with a minimum Maximum Annual Peak Demand of 1,000 kW or an aggregated Maximum Annual Peak Demand at multiple service locations of 5,000 kW (collectively, “Eligible GSA Customers”). The Program is also limited to a combined total of 600 MW of renewable energy facilities between the Duke Energy Carolinas and Duke Energy Progress service territories (“Maximum GSA Program Capacity”). Of the 600 MW of Maximum GSA Program Capacity available under the Program, 250 MW shall be reserved exclusively for use by the UNC system, and 100 MW shall be reserved exclusively for use by major military installations in North Carolina (together, the “Reserved Capacity”). Of the remaining 250 MW, 160 MW shall be reserved for use by eligible Duke Energy Carolinas customers, and 90 MW shall be reserved for use by eligible Duke Energy Progress customers. Any Reserved Capacity that is not subscribed by the UNC system or major military installations, as applicable, within the three-year Reserved Capacity period following initial Program approval of [Date] shall then be made available for subscription by any Eligible GSA Customer. This Rider and the Program shall remain open to Eligible GSA Customers pursuant to the Program’s terms and conditions, as approved by the Commission, for a period of five years following initial Program approval of [Date].

DIRECTED PROCUREMENT OF GSA FACILITIES

The Program allows Eligible GSA Customers to direct the Company to procure renewable energy and allows the Customer to obtain the renewable energy certificates (“RECs”) generated by a GSA Facility or portfolio of GSA Facilities (“GSA Facility(ies)”). A GSA Facility must be a new renewable energy facility located in the ~~Duke Energy Progress Company’s~~ service territory in either North Carolina or South Carolina with supply that will be dedicated to the Program by the GSA Facility’s owner (“Renewable Supplier”).

Customers seeking to participate in the Program shall have the option to either request ~~Duke Energy Progress~~ the Company to develop or competitively procure a GSA Facility(ies) to meet the ~~Customer’s~~ Customers’ requirements (the “Standard Offer option”) or identify and propose to the Company a GSA Facility(ies) offered by a Renewable Supplier (the “Self-Supply option”). Under both the Standard Offer option and the Self-Supply option, the Renewable Supplier will enter into a power purchase agreement (“GSA PPA”) with the Company to supply the desired renewable energy.

If the Customer requests the Standard Offer option, the Company will select a GSA Facility(ies) through the Company’s independently-administered competitive procurement of renewable energy program (“CPRE Program”) request for proposal (“RFP”) process. Under the Self-Supply option, the Customer can choose to either have the Company meet the requirement from one or more Company-developed GSA Facilities with supply that will be dedicated to serving the Program or negotiate price terms directly with a Renewable Supplier.

Under the Standard Offer option, the GSA Standard Offer product procured by the Company will be the same as the CPRE Program product in all material respects, and shall include renewable energy, capacity, and RECs. Under the Self-Supply option, the Company will procure an unbundled renewable energy product from a Renewable Supplier, which shall include delivery of energy and capacity only, without transfer of the RECs generated by the GSA Facility(ies) to the Company. As described below, under the Self-Supply option, the Renewable Supplier shall transfer RECs directly to the Self-Supply Customer through a separate contractual arrangement.

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#### APPLICATION PROCESS AND GSA SERVICE AGREEMENT

To participate in the GSA Program, a Customer must submit an application to the Company during a GSA Program enrollment window, as ~~prescribed~~**described** on the Company's Program website, requesting an annual amount of renewable capacity to be developed or procured on the Customer's behalf. The Customer may apply for the Company to procure renewable generation capacity up to 125% of the Customer's aggregate Maximum Annual Peak Demand at eligible Customer service location(s) within ~~Duke Energy Carolinas'~~**the Company's** North Carolina service territory.

The Customer's application will designate whether the Customer is requesting the Company develop a GSA Facility or whether the Customer is electing to participate under the Standard Offer option or the Self-Supply option. The application shall also identify the requested contract term for the Customer's enrollment in the Program, which shall be twenty years, if the Customer elects the Standard Offer option and may be two, five, ~~ten, fifteen,~~ or twenty years, if the Customer elects the Self-Supply option. All Customer applications shall be accompanied by the payment of a \$2,000 nonrefundable application fee. Program reservations will be accepted on a "first-come-first-served" basis based upon the date and time of receipt of the Customer's completed application and application fee. Subsequent applications will be held until earlier applications are resolved and will not be rejected until the Company's Maximum GSA Program Capacity is satisfied. The \$2,000 application fee will be refunded to the Customer only in the event that the Customer's application is rejected due to insufficient GSA Program Capacity.

A Self-Supply Customer submitting an application shall also be required to deliver, at the time of application, a standard-form term sheet executed by the Customer and Renewable Supplier, which shall identify the Renewable Supplier and provide information about the proposed GSA Facility and other information as requested by the Company and identified in the term sheet. In addition, the Renewable Supplier must also provide, at the time of the application, a capacity reservation bond in an amount to be determined by the Company in accordance with the methodology used in the CPRE Program.

Upon review of the Customer's application and after completion of the CPRE RFP, including procurement of Standard Offer GSA Capacity, the Company will inform the Customer of the applicable "GSA Bill Credit." **The GSA Bill Credit for Self-Supply Customers that execute 2-year GSA Service Agreements will be set at the lesser of the negotiated GSA PPA contract price or the 2-year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full duration of the GSA Service Agreement. For Self-Supply Customers that select either 5-, 10-, or 15-year contract terms, the GSA Bill Credit will be set at the lesser of the negotiated GSA PPA contract price or the 5-year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full duration of the GSA Service Agreement.** The GSA Bill Credit for both Standard Offer and Self-Supply Customers **who elect a 20-year GSA Service Agreement term** will be equal to the capacity-weighted average of the awarded CPRE RFP bids (for both CPRE and GSA Program supply) **Standard Offer GSA Capacity procured through the applicable tranche of the CPRE RFP Solicitation (the "GSA Tranche Weighted Average Price")** minus the GSA REC Value, as defined below. ~~The GSA Bill Credit may not exceed the forecasted avoided cost rate over the term of the contract calculated by Duke Energy Progress based upon the methodology approved by the Commission.~~ **Until such time as the GSA Tranche Weighted Average Price becomes known, the Companies' 5-year forecasted avoided cost will serve as the GSA Bill Credit for GSA Customers who enter into Self-Supply option 20-year GSA Service Agreements, for the full 20-year contract term.**

The GSA Service Agreement shall include the general terms and conditions applicable under this Rider and shall specify the rates and charges applicable under the GSA Program for the contract term. The Customer must execute and return the GSA Service Agreement within 30 days of delivery by the Company and, in the case of Self-Supply option only, the Renewable Supplier must execute and return the GSA PPA within 30 days of delivery by the

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Company. Failure to timely execute and return the GSA Service Agreement will result in termination of the Customer's application and GSA capacity reservation, which would then require the Customer to start the Program enrollment process anew in order to participate in the Program.

GSA PPA RATES AND TERMS

The GSA PPA delivered to a Renewable Supplier selected to provide a GSA Facility under the Standard Offer option shall be in substantially the same form as the PPA approved for the CPRE Program procurement, and shall include delivery of renewable energy, capacity, and RECs. The Standard Offer GSA PPA contract price shall be equal to the Renewable Supplier's proposal price, as bid into the CPRE RFP.

The GSA PPA delivered to a Renewable Supplier under the Self-Supply option shall also be in substantially the same form as the PPA approved for the CPRE Program procurement but shall exclude the transfer of RECs to the Company, as discussed above. The GSA PPA contract price for a twenty-year term shall be equal to the ~~capacity weighted average of all proposals selected through the combined CPRE and GSA RFP~~ **applicable GSA Tranche Weighted Average Price** minus the GSA REC Value. The GSA PPA contract price in the case of a ~~two-2-, 5-, 10-, or five15-~~ year term shall be the lesser of the Company's avoided cost rate or the GSA PPA rate (excluding RECs) negotiated between the Renewable Supplier and the Customer.

RENEWABLE ENERGY CREDITS

For Standard Offer Customers, the value of the RECs will be equal to a market index based "GSA REC Value," as determined by the Company and published on the Company's website prior to each enrollment period. All RECs ~~provided~~ **transferred** by the Company pursuant to the GSA Service Agreement will be managed by the Company through the North Carolina Renewable Energy Tracking System ("NC RETS") and transferred annually to a NC RETS account designated by the GSA Customer upon receipt of payment in full under the GSA Service Agreement for such annual period.

For Self-Supply Customers, the value of RECs ~~shall may~~ be negotiated and agreed to through a REC purchase agreement **solely** between the Customer and the Renewable Supplier ("REC Agreement"). The Customer ~~shall may~~ acquire the RECs directly from the Renewable Supplier, ~~and the GSA Service Agreement shall include an attestation by the Customer that the RECs generated by the designated GSA Facility will be transferred by the Renewable Supplier to the NC RETS account identified by the GSA Customer. The Company shall not~~ **however, in no event shall the Company** be responsible for procuring, **managing, reporting, retiring,** delivering, or transferring RECs to the Customer, **and the Company** shall bear no liability to the Customer for the failure of the Renewable Supplier to perform its obligations under the applicable REC Agreement.

Any obligation or agreement by the Company to supply RECs under this Rider shall be terminated if the Renewable Supplier defaults on the GSA PPA or fails to deliver the contracted renewable generation to the Company.

MONTHLY RATE

An amount computed under the GSA Customer's primary rate schedule and any other applicable riders with which this Rider is used plus the sum of the following amounts:

1. GSA Product Charge – the energy produced by the GSA Facility in the prior billing month times the fixed rate for purchased power from the Renewable Supplier specified in the GSA Service Agreement
2. GSA Bill Credit – the energy produced by the GSA Facility in the prior billing month times the fixed GSA Bill Credit rate specified in the GSA Service Agreement
3. GSA Administrative Charge – the applicable monthly administrative charge shall be \$375 per Customer Account, plus an additional \$50 charge per additional account billed

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GENERAL PROVISIONS

The Customer shall provide security as required in the GSA Service Agreement. For the avoidance of doubt, the Company shall not be liable to the Customer in the event that a GSA Facility fails to produce renewable energy as required under a GSA PPA or otherwise consistent with the Customer's expectations. The Company shall also have no liability under any REC Agreement between the Customer and the Renewable Supplier.

If the Customer requests termination of the GSA Service Agreement, or defaults on the GSA Service Agreement before the expiration of the term of the GSA Service Agreement, the Customer shall pay to the Company an early termination charge as determined under the GSA Service Agreement. Such termination charge may be adjusted if and to the extent a successor customer requests service under this Rider and fully assumes the obligation for the purchase of renewable energy prior to the effective date of the contract termination; provided, however, Company will not utilize or change utilization of its assets and positions to minimize Customer's costs due to such early termination. If the Renewable Supplier defaults on the GSA PPA, the Company will terminate the Customer's GSA Service Agreement with no further liability on the part of either party except for those liabilities accruing prior to default by the Renewable Supplier under the GSA PPA.

Effective for service rendered on and after (Date)  
NCUC Docket No. E-2, Sub 1170

**Duke Energy Carolinas, LLC's and  
Duke Energy Progress, LLC's  
GREEN SOURCE ADVANTAGE PROGRAM  
REPLY COMMENTS**

**Attachment B**

**Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's  
GSA Service Agreements (Standard Offer and Self-Supply option Versions)**



**GREEN SOURCE ADVANTAGE SERVICE AGREEMENT**  
**[Standard Offer Version Energy, Capacity and RECs]**

**THIS GREEN SOURCE ADVANTAGE SERVICE AGREEMENT** ("Service Agreement") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between [\_\_\_\_\_] ("Customer") and [Duke Energy Carolinas, LLC][Duke Energy Progress, LLC] ("Company"). Customer and Company may each be referred to individually as a "Party" and collectively, as the "Parties."

**WHEREAS**, Customer has requested that Company purchase certain quantities of Renewable Energy Product generated by the Supply Resource, as such terms are defined below, under and in accordance with the terms, conditions and rules of the Company's Green Source Advantage Program Rider approved by the North Carolina Utilities Commission ("Commission"), as may be modified from time to time (the "GSA Program"); and

**WHEREAS**, Company has agreed to procure the Renewable Energy Product at the request of the Customer under and in accordance with the terms and conditions of the GSA Program and this Service Agreement; and

**WHEREAS**, Customer has agreed to pay Company in accordance with the terms and conditions of this Service Agreement for the Reserved Quantity of Renewable Energy Product, as specified herein, generated by the Supply Resource and delivered to Company.

**NOW THEREFORE**, in consideration of the promises and mutual covenants set forth herein and other good and valuable consideration, the sufficiency of which is acknowledged, and intending to be bound hereby, the Parties agree as follows:

1. **Term:** This Service Agreement shall be effective upon execution and delivery by both Company and Customer (the "Effective Date"), and shall remain in full force and effect through [*insert date which is 60 days past delivery period specified in Section 4 below*] (the, "Term"). Customer understands and agrees that if this Service Agreement is terminated for any reason prior to completion of the Term or otherwise expires, such termination or expiration shall not relieve Customer from any obligation accruing prior to the effectiveness of such termination or expiration. Furthermore, any obligations or liabilities that by their nature or express terms extend beyond the termination or expiration of this Service Agreement, including, without limitation, provisions relating to rates, billing, damages, limitations of liabilities, and any other provisions necessary to interpret or enforce rights and obligations shall survive the expiration or termination of this Service Agreement.
2. **Supply Resource:** The Supply Resource shall consist of one or more renewable energy facilities (collectively, the "Supply Resource") that have been selected to supply GSA Program capacity under the request for proposal issued by Company on [insert date of RFP] (the "RFP") under the Competitive Procurement of Renewable Energy Program instituted by Company pursuant to N.C. Gen. Stat. Section 62-110.8 (the "CPRE Program").
3. **Renewable Energy Product; RPPA.** The Renewable Energy Product (the "Renewable Energy Product") includes the Energy, Capacity and associated renewable energy certificates ("RECs") produced by the Supply Resource and delivered to Company pursuant



to one or more Renewable Power Purchase Agreement(s) (collectively, the “RPPA”) entered into between Company and each Supply Resource owner (collectively, the “Renewable Supplier”) that have been selected to supply GSA Program capacity under the RFP. Capitalized terms that are not defined herein shall have the meaning ascribed to such terms in the RPPA.

4. **Delivery Period.** The delivery period (the “Delivery Period”) under this Service Agreement shall begin on the first date upon which Energy, is generated by the Supply Resource and delivered to, and metered by, the Company, and shall continue through the twentieth (20<sup>th</sup>) anniversary thereof.
5. **Reserved Quantity:** The annual quantity of Renewable Energy Product reserved by Customer hereunder shall be \_\_\_\_\_MW of Energy and Capacity based on the Supply Resource’s nameplate Capacity rating and the associated RECs produced by the Supply Resource (the “Reserved Quantity”). Customer understands and agrees that the Supply Resource is an intermittent resource without production guarantees, and Company will supply the Customer’s pro rata share of the Renewable Energy Product generated by the Supply Resource and delivered to Company, which may be either higher or lower than the Reserved Quantity.
6. **Rates for Renewable Energy Product.** The rates for the Renewable Energy Product shall be as set forth below.
  - a. **Energy and Capacity.** The rates for Energy and Capacity shall be [\$\_\_\_\_\_\_], which is equal to the capacity weighted average price of all proposals selected in the RFP solicitation to supply the GSA Program minus the REC value specified below.
  - b. **RECs.** The rate for each REC shall be \$\_\_\_\_\_ per REC, as determined by Company in a commercially reasonable manner.
7. **GSA Administrative Service Charge.** As a participant in the GSA Program the Customer will be charged a monthly administrative service charge for primary and (xx) additional accounts as set forth in the GSA Rider Program (the “GSA Administrative Service Charge”).
8. **Billing.** In addition to its normal monthly retail bill from Company, Customer will be billed for the GSA Administrative Service Charge and the total cost of Customer’s pro rata share of the Renewable Energy Product delivered to Company under the Supply Resource during each billing period (on a one-month lag). Amounts paid to Company under the consolidated bill will be applied first to Customer’s normal retail bill and then to this Service Agreement.
9. **Bill Credit for Power:** A monthly bill credit (on a one-month lag) for the avoided capacity and energy expense associated with Customer’s pro rata share of Energy and Capacity delivered to Company from the Supply Resource during the applicable billing period shall be provided to Customer (the “Bill Credit”). The Bill Credit shall be equal to the following:

the total amount of Customer’s pro rata share of the Renewable Energy Product delivered to Company under the Supply Resource during the relevant billing period multiplied by the Energy and Capacity rates specified in Section 6(a) above.
10. **REC Transfer.** Company will transfer the RECs associated with Customer’s pro rata share of Energy delivered to Company under the Supply Resource to the Customer’s North

Carolina Renewable Energy Tracking System ("NC RETS") account on a periodic basis.

11. **Security:**

- a. **Performance Assurance.** Upon execution of this Service Agreement, Customer shall provide to Company and maintain for the benefit of Company Performance Assurance in the [following amount: \$\_\_\_\_\_] (the "Posting Requirement") as may be adjusted from time to time in accordance with this Article 11. Customer shall ensure that the Performance Assurance will remain in full force and effect, and outstanding in the required amount throughout the Term and for 90 days thereafter. To secure Customer's obligations of payment and performance under this Service Agreement, Customer grants to Company a present and continuing first priority security interest in and lien on all present and future Performance Assurance. Customer agrees to take such actions as Company requires to perfect Company's first-priority security interest in and lien on the Performance Assurance and liquidation of its proceeds, as applicable. Upon an Event of a Default by Customer, Company shall be entitled to draw on and retain the proceeds of any Performance Assurance to secure Customer's obligations hereunder, or to pay, net, recoup, set-off, liquidate, or otherwise receive payment of any amounts owed to Company under this Service Agreement. Customer's failure to fully maintain or provide Performance Assurance or otherwise fully comply with this Article 11 shall be a default by Customer and shall entitle Company to early termination damages as set forth herein.
- b. **Unsecured Credit Threshold Matrix.** For a Customer, or its Guarantor as applicable, that is Creditworthy and is not in default of any provisions under this Service Agreement or under its normal retail bill, the Customer shall be granted an unsecured credit limit under this Service Agreement only based on the below stated thresholds. In the event that the Credit Rating of Customer or its Guarantor changes during the Term of this Service Agreement, the amount of unsecured credit, if any, granted to Customer will be adjusted accordingly.

Credit Rating of the Customer or its Guarantor				Maximum Credit Limit (calculated as the lesser of the percentage of TNW and the applicable Credit Limit Cap below)		
S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap	Security Required (1)	Posting Requirement (2)
AA- and above	Aa3 and above	AA- and above	16%	\$35,000,000	TBD	TBD
A-, A, A+	A3, A2, A1	A-, A, A+	16%	\$25,000,000	TBD	TBD
BBB+	Baa1	BBB+	10%	\$20,000,000	TBD	TBD
BBB	Baa2	BBB	10%	\$15,000,000	TBD	TBD
BBB-	Baa3	BBB-	8%	\$10,000,000	TBD	TBD
BB+	Ba1	BB+	2%	\$2,000,000	TBD	TBD
BB	Ba2	BB	1%	\$1,000,000	TBD	TBD
BB-	Ba3	BB-		0	TBD	TBD

- (1) 5% of the total cost of the Reserved Quantity of Renewable Energy Product to be delivered under the RPPA as estimated at the time of inception.
- (2) Greater of zero or (Security minus Maximum Credit Limit)
- (3) In the event that Customer enters into multiple agreements under the GSA Program, then the Security Required shall be aggregated across all such agreements and such aggregate amount, along with the Credit Limit Cap reflected in the above table based on the Credit Rating of Customer or its Guarantor, will be used for the purpose of determining the Posting Requirement in aggregate for all such agreements. If an entity wishes to act as Guarantor for multiple agreements under the GSA Program, then the Maximum Credit Limit Cap as established herein will be allocated to such agreements in the amounts requested by the Guarantor.

- c. **Definitions.** Except as otherwise defined herein, Capitalized terms used in this Article 10 shall have the following meanings:
- i. “Credit Rating” means, with respect to any applicable entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating. If the entity is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the entity is rated by three rating agencies and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. If an entity is not rated and requests that the Company assess its creditworthiness, then the Credit Rating shall be established by the Company in its sole discretion. In any case, the Credit Rating may be revised to reflect ongoing developments such as changes in agency ratings or material changes in an entity’s financial results as they occur.
  - ii. “Creditworthy” or “Creditworthiness” - means (i) a Person with an investment grade rating from two (2) of the three (3) Rating Agencies such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least (A) BBB- by S&P, if rated by S&P, (B) Baa3 by Moody’s, if rated by Moody’s, and (C) BBB- by Fitch, if rated by Fitch, respectively, and (ii) has satisfactory and verifiable creditworthiness determined in Company’s sole discretion. Notwithstanding the foregoing, an entity that does not have such a rating may submit complete audited financial statements (or substantially equivalent information certified by an appropriate officer of such entity) for review by the Company, which shall make a determination of the entity’s creditworthiness and assign an appropriate rating on a commercially reasonable basis for purposes of this Agreement. Unaudited or incomplete financial information will negatively impact the assigned rating.
  - iii. “Guarantor” means any Creditworthy Person having the authority and agreeing to guarantee the Customer’s obligations under this Service Agreement and is otherwise acceptable to Company in its sole discretion.
  - iv. “Guaranty” means a parent company guaranty, in substantially the form set forth in Exhibit A attached hereto, provided by a Guarantor in favor of Company guaranteeing the obligations of Customer under this Service Agreement.
  - v. “Fitch” - means Fitch Ratings Ltd. or its successor. If Fitch ceases to exist or publish ratings, Fitch will mean a nationally recognized rating agency mutually agreed upon by the Parties.
  - vi. “Letter(s) of Credit” means one or more irrevocable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank, which is not an

affiliate of Customer, which has and maintains a credit rating of at least A- from S&P and A3 from Moody's, in substantially the form set forth in Exhibit B attached hereto, or in such other form as Company deems acceptable in its sole discretion.

- vii. **Material Adverse Change.** A Material Adverse Change occurs with respect to Customer or its Guarantor if one exists, if (i) there is any material change in the condition (financial or otherwise), Credit Rating, net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of Customer or its Guarantor to fulfill its obligations under this Service Agreement or the guaranty as applicable; or (ii) there are reasonable grounds to believe that the Creditworthiness of such Person has become unsatisfactory or its ability to perform under this Service Agreement or the Guaranty (if applicable) has been materially impaired.
- viii. **"Moody's"** means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- ix. **"Person"** means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or governmental authority.
- x. **"Performance Assurance"** means collateral required under this Service Agreement in the form of: (i) cash, (ii) one or more Letter(s) of Credit, or a Guaranty acceptable to Company in its sole discretion, in each case that meets the requirements set forth in this Service Agreement, provided by Customer to Company, as credit support, adequate assurances, and security to secure Customer's payment and performance obligations under this Service Agreement.
- xi. **"Rating Agency" or "Rating Agencies"** - means the rating entities of S&P, Moody's or Fitch.
- xii. **"S&P"** means Standard & Poor's Ratings Services, Inc. or any successor-rating agency thereto.
- xiii. **"TNW"** means tangible net worth, calculated as total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles.
- d. **Adequate Assurances.** In the event that a Material Adverse Change has occurred and without limiting any payment obligations or any other existing performance assurance obligation, if any, set forth herein, Company may, from time to time, request, in writing, that Customer provide Company with Performance Assurance, including an additional amount of Performance Assurance over the amounts specified in Section 11(a) above, in an amount reasonably determined by Company. In the

event that Customer fails to provide the required amount of such Performance Assurance to Company within five (5) business days of receipt of Company's notice requesting the new or additional Performance Assurance, then Company may declare such failure an Event of Default and exercise any or all other remedies provided for hereunder or pursuant to law or equity.

- e. **Financial Disclosures.** Customer shall timely provide to Company financial information of Customer as follows: (i) within 120 days after the end of each fiscal year that this Service Agreement is effective a copy of Customer's annual report containing audited consolidated financial statements for such fiscal year; and, (ii) upon request of Company, a copy of Customer's most recent quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Customer attesting to their accuracy. The statements shall be prepared in accordance with generally accepted accounting principles or other procedures with which Customer is required to comply with under applicable law. If such information is available on a publicly available web site, then this requirement shall be deemed to be satisfied.
- f. **Set-off.** In addition to any rights of set-off a Party may have as a matter of law or otherwise and subject to applicable law, upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party under this Agreement and any other agreement between the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party under this Agreement and any other agreement between the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in a commercially reasonable manner estimate that obligation and set-off in respect of the estimate, subject to the relevant Party providing an accounting and true-up to the other Party after the amount of the obligation is ascertained.

12. **Events of Default.** An "Event of Default" means with respect to the non-performing Party (such Party, the "Defaulting Party"), the occurrence of any one or more of the following, each of which, individually, shall constitute a separate Event of Default:

- a. Failure by Customer to make any payment required hereunder when due if such failure is not remedied within ten (10) days after receipt of written notice of such failure.
- b. Failure of Customer to perform any of its obligations under Article 11 and such failure continues for a period of five (5) business days after receipt by Customer of written notice of such failure.
- c. Failure by a Party to perform any of its material obligation hereunder (other than such failures described in clauses (a), (b) and (d) of this Section 12), and such failure is not remedied within thirty (30) days after receipt by the defaulting Party of written notice



of such failure; provided, that so long as the defaulting Party has initiated and is diligently attempting to effect a cure, the defaulting Party's cure period shall extend for an additional reasonable period of time (not to exceed an additional thirty (30) days).

- d. If a Party or its Guarantor (i) makes an assignment for the benefit of its creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, (iii) has such petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing, (iv) becomes insolvent or, (v) is unable to pay its debts when due.

13. **Remedies Upon Default.** If an Event of Default with respect to a Defaulting Party has occurred and is continuing, then the other Party (such Party, the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective) as an early termination date to accelerate all amounts owing between the Parties, liquidate, net, recoup, set-off, and early terminate this Agreement and any other agreement between the Parties (such day, the "Early Termination Date").

14. **Service Regulations.** Company's obligations under this Service Agreement shall be subject to the rules and requirements of the GSA Program and Company's Service Regulations approved by the Commission, as may be modified from time to time.

15. **Renewable Supplier's Performance.** Notwithstanding any provision to the contrary set forth in this Service Agreement, all of Company's obligations under this Service Agreement are contingent on the performance of the Renewable Supplier under the RPPA. The failure or inability of the Renewable Supplier to honor its commitments under the RPPA, shall excuse Company's performance under this Service Agreement to the extent such performance is prevented thereby. Company shall make a good faith attempt to enforce its rights under the RPPA but shall be under no obligation to litigate any dispute or bring suit against the Renewable Supplier.

16. **Re-Allocation or Termination of the RPPA.** In the event that one or more RPPA supplying GSA Program capacity under the RFP is terminated, for any reason, other than as a result of Company's default prior to the end of the Term, then Company shall re-allocate the remaining Supply Resource, on a pro rata basis, among the GSA Program Customers for which Supply Resource have been obtained through the corresponding RFP and Company shall have no liability for any shortfall or failure to meet any obligation under this Service Agreement resulting from the reallocation. If Company determines that there is insufficient supply to meet the obligations under this Services Agreement as a result of the termination of one or more RPPA, for any reason other than as a result of Company's default, prior to the end of the Term, then Company may terminate this Service Agreement upon written notice to Customer and Company will have no further obligations hereunder.

17. **Confidentiality.** Customer may publicly announce that it is purchasing service from Company under this Service Agreement, the type of renewable Supply Resource (e.g. a "solar facility"), and the Term of this Service Agreement; *provided, however*, Customer shall not publicize and shall keep confidential all other information concerning the Supply Resource and terms and conditions set forth in this Service Agreement.
18. **Publicity.** Neither Customer nor Company shall make any use of the other Party's (or its affiliate's) name, logo, or likeness in any publication, promotional material, news release, or similar publicity material without the other Party's prior review, approval, and written consent; *provided, however*, any issuance or material approved by Company shall be limited to the non-confidential facts and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of any Supply Resource.
19. **Limitations of Liabilities.** *NEITHER COMPANY NOR CUSTOMER SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, PUBLICITY, REPUTATIONAL, OR ANY OTHER INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, TORT, CONTRACT, OR OTHERWISE.* Customer agrees and understands that any and all payments, rates, charges, and/or damages permitted under the Rider GSA are and shall be deemed direct obligations and will not be excluded from liability or recovery under the Limitations of Liabilities provisions.
20. **Mutual Representations.** Customer and Company each hereby represents and warrants to the other the following: (i) each has the capacity, authority, and power to execute, deliver, and perform under this Service Agreement; (ii) this Service Agreement constitutes legal, valid, and binding obligations enforceable against it; (iii) each person who executes this Service Agreement on behalf of each party has full and complete authority to execute and bind such party to this Service Agreement as an authorized representative of such party; (iv) each is acting on its own behalf and has made its own independent decision to bind itself under this Service Agreement; and, (v) each has completely read, fully understands, and voluntarily accepts every provision of this Service Agreement.
21. **Governing Law.** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.
22. **Successors; Amendments.** This Service Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto. No amendment, modification, or change to this Service Agreement shall be enforceable unless agreed upon in a writing that is executed by each of the Parties hereto.
23. **Non-Waiver.** Neither Party will be deemed to have waived the exercise of any right that it holds under this Service Agreement or at law unless such waiver is expressly made in writing. Failure of a Party at any time, and for any length of time, to require performance by the other Party of any obligation under this Service Agreement shall in no event affect the right to require performance of that obligation or the right to claim remedies for breach under the Service Agreement or at law. No waiver by either Party of any one or more defaults by the



other Party in the performance of any of the provisions of this Service Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

24. **Counterparts**. This Service Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument. Delivery by a Party of an executed counterpart of a signature page of this Agreement by facsimile or electronic transmission (including PDF file) shall be effective as delivery of a manually executed counterpart hereof.

SIGNATURE PAGE FOLLOWS

**IN WITNESS WHEREOF**, on the day and year set forth below, the Company and Customer have caused this Service Agreement to be executed by their respective duly authorized representatives.

[DUKE ENERGY CAROLINAS, LLC][DUKE  
ENERGY PROGRESS, LLC]

BY: \_\_\_\_\_  
NAME:  
TITLE:  
DATE:

CUSTOMER\_\_\_\_\_

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE:

## Exhibit A Form of Guaranty

**THIS GUARANTY AGREEMENT** (this "Guaranty"), dated as of [date], is issued and delivered by [ **enter corporate legal name** ], a [state] [form of entity] (the "**Guarantor**"), for the account of [ **enter corporate name** ], a [state] [form of entity] (the "**Obligor**"), and for the benefit of [ **enter corporate name** ], a [state] [form of entity] (the "**Beneficiary**").

### Background Statement

WHEREAS, the Beneficiary and Obligor entered into that certain \_\_\_\_\_ dated (the "Agreement"); and

WHEREAS, Beneficiary has required that the Guarantor deliver to the Beneficiary this Guaranty as an inducement to enter into the Agreement.

### Agreement

**NOW, THEREFORE**, in consideration of the foregoing and for good and valuable consideration, the Guarantor hereby agrees as follows:

1. Guaranty; Limitation of Liability. Subject to any rights, setoffs, counterclaims and any other defenses that the Guarantor expressly reserves to itself under this Guaranty, the Guarantor absolutely and unconditionally guarantees the timely payment of the Obligor's payment obligations under the Agreement (the "Guaranteed Obligations"); provided, however, that the Guarantor's aggregate liability hereunder shall not exceed [amount] U. S. Dollars (U.S. [\$xx,xxx,xxx]).

Subject to the other terms of this Guaranty, the liability of the Guarantor under this Guaranty is limited to payments expressly required to be made under the Agreement, and except as specifically provided therein, the Guarantor shall not be liable for or required to pay any consequential or indirect loss (including but not limited to loss of profits), exemplary damages, punitive damages, special damages, or any other damages or costs.

2. Effect of Amendments. The Guarantor agrees that the Beneficiary and the Obligor may modify, amend and supplement the Agreement and that the Beneficiary may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Beneficiary.

3. Waiver of Rights. The Guarantor expressly waives (i) protest, (ii) notice of acceptance of this Guaranty by the Beneficiary, and (iii) demand for payment of any of the Guaranteed Obligations.

4. Reservation of Defenses. Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses that the Obligor may have to payment of all or any portion of the Guaranteed Obligations except defenses arising from the bankruptcy, insolvency, dissolution or liquidation of the Obligor and other defenses expressly waived in this Guaranty.

5. Settlements Conditional. This guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any monies paid to the Beneficiary in

reduction of the indebtedness of the Obligor under the Agreement have to be repaid by the Beneficiary by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force, and the liability of the Guarantor under this Guaranty shall be computed as if such monies had never been paid to the Beneficiary

6. Notice. The Beneficiary will provide written notice to the Guarantor if the Obligor defaults under the Agreement.

7. Primary Liability of the Guarantor. The Guarantor agrees that the Beneficiary may enforce this Guaranty without the necessity at any time of resorting to or exhausting any other security or collateral. This is a continuing Guaranty of payment and not merely of collection.

8. Representations and Warranties. The Guarantor represents and warrants to the Beneficiary as of the date hereof that:

- a. The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;
- b. The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- c. All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- d. This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

9. Nature of Guaranty. The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the Obligor under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by Beneficiary

concerning any provisions of the Agreement; the rendering of any judgment against the Obligor or any action to enforce the same; any failure by Beneficiary to take any steps necessary to preserve its rights to any security or collateral for the Guaranteed Obligations; the release of all or any portion of any collateral by Beneficiary; or any failure by Beneficiary to perfect or to keep perfected its security interest or lien in any portion of any collateral.

10. Subrogation. The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Guaranteed Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Guaranteed Obligations, the Guarantor shall be subrogated to the rights of Beneficiary against the Obligor, and Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. Term of Guaranty. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all the Guaranteed Obligations have been discharged, and (ii) [date] (the "Expiration Date"); provided however, the Guarantor will remain liable hereunder for Guaranteed Obligations that were outstanding prior to the Expiration Date.

12. Governing Law. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to principles of conflicts of law.

13. Expenses. The Guarantor agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel) relating to the enforcement of the Beneficiary's rights hereunder in the event the Guarantor disputes its obligations under this Guaranty and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that the Beneficiary is entitled to receive payment of a portion of or all of such disputed amounts.

14. Waiver of Jury Trial. The Guarantor and the Beneficiary, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

15. Entire Agreement; Amendments. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary.

16. Headings. The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

17. No Third-Party Beneficiary. This Guaranty is given by the Guarantor solely for the benefit of the Beneficiary, and is not to be relied upon by any other person or entity.

18. Assignment. Neither the Guarantor nor the Beneficiary may assign its rights or obligations under this Guaranty without the prior written consent of the other, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Beneficiary may assign this Guaranty, without the Guarantor's consent, provided such assignment is made to an affiliate or subsidiary of the Beneficiary

Any purported assignment in violation of this Section 18 shall be void and without effect.

19. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing or sent by electronic mail to the Guarantor or to the Beneficiary, as applicable, at its address as indicated below:

If to the Guarantor, at:

[Guarantor name]  
[Address]  
Attention: [contact]  
Email:[email address]

With a copy to:

[Customer name]  
[Address]  
Attention: [contact]  
Email:[email address]

If to the Beneficiary, at:

[Beneficiary name]  
[Address]  
Attention: [contact]  
Email:[email address]

or such other address as the Guarantor or the Beneficiary shall from time to time specify. Notice shall be deemed given (a) when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail or (b) when received, as evidenced by email confirmation, if sent by email and received on or before 4 pm local time of recipient, or (c) the next business day, as evidenced by email confirmation, if sent by email and received after 4 pm local time of recipient.

**IN WITNESS WHEREOF**, the Guarantor has executed this Guaranty as of the day and year first above written

[Guarantor name]

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit B**  
**Form of Letter of Credit**

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: \_\_\_\_\_

Date: \_\_\_\_\_

Beneficiary:

[Duke Energy Carolinas, LLC][Duke Energy Progress, LLC]  
550 S. Tryon Street, DEC 40C  
Charlotte, North Carolina 28202  
Attn: Credit Risk Management Director

Ladies and Gentlemen:

By the order of:

Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We hereby issue in your favor our irrevocable letter of credit No.: \_\_\_\_\_ for the account of \_\_\_\_\_ for an amount or amounts not to exceed \_\_\_\_\_ US Dollars in the aggregate (US\$ \_\_\_\_\_) available by your drafts at sight drawn on [Issuing Bank] effective \_\_\_\_\_ and expiring at our office on \_\_\_\_\_ (the "Expiration Date").

The Expiration Date shall be deemed automatically extended without amendments for one year from the then current Expiration Date unless at least ninety (90) days prior to the then applicable Expiration Date, we notify you in writing by certified mail return receipt requested or overnight courier that we are not going to extend the Expiration Date. During said ninety (90) day period, this letter of credit shall remain in full force and effect

Funds under this letter of credit are available against your draft(s), in the form of attached Annex 1, mentioning our letter of credit number and presented at our office located at [Issuing Bank's address must be in US] and accompanied by a certificate in the form of attached Annex 2 with appropriate blanks completed, purportedly signed by an authorized representative of the Beneficiary, on or before the Expiration Date in accordance with the terms and conditions of this letter of credit. Partial drawings under this letter of credit are permitted.

Certificates showing amounts in excess of amounts available under this letter of credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this letter of credit.

We engage with you that drafts drawn under and in conformity with the terms of this letter of credit will be duly honored on presentation if presented on or before the Expiration Date. Presentation at our office includes presentation in person, by certified, registered, or overnight mail.

Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [Issuing Bank] under this letter of credit is the individual obligation of [Issuing Bank] and is in no way contingent upon reimbursement with respect hereto.

This letter of credit is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 ("ISP98"). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.

We shall have a reasonable amount of time, not to exceed three (3) business days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly.

Kindly address all communications with respect to this letter of credit to [Issuing Bank's contact information], specifically referring to the number of this standby letter of credit.

All banking charges are for the account of the Applicant.

This letter of credit may not be amended, changed or modified without our express written consent and the consent of the Beneficiary.

This letter of credit is transferable, and we agree to consent to its transfer, subject to our standard terms of transfer and your payment to us of our standard transfer fee.

Very truly yours  
[Issuing Bank]

\_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Authorized Signer

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

**ARTICLE I. ANNEX 1**

**FORM OF SIGHT DRAFT**

[Insert date of sight draft]

To: *[Issuing Bank's name and address]*

For the value received, pay to the order of \_\_\_\_\_ by wire transfer of immediately available funds to the following account:

*[name of account]*

*[account number]*

*[name and address of bank at which account is maintained]*

*[aba number]*

*[reference]*

The following amount:

*[insert number of dollars in writing]* United States Dollars

(US\$ *[insert number of dollars in figures]*)

Drawn upon your irrevocable letter of credit No. *[irrevocable standby letter of credit number]* dated *[effective date]*

*[Beneficiary]*

By: \_\_\_\_\_

Title: \_\_\_\_\_

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

**ARTICLE II. ANNEX 2**

**FORM OF CERTIFICATE**

[Insert date of certificate]

To: *[issuing bank's name and address]*

*[check appropriate draw condition]*

[\_\_\_\_\_] An Event of Default (as defined in the [Name of Agreement between [Beneficiary's Name] and [Insert Counterparty's Name] dated as of \_\_\_\_\_ (the "Agreement")) has occurred with respect to [Counterparty's Name] and such Event of Default has not been cured within the applicable cure period, if any provided for in the Agreement.

Or

[\_\_\_\_\_] [Counterparty's Name] is required, pursuant to the terms of the Agreement, to maintain a letter of credit in favor of [Beneficiary's Name], has failed to renew or replace the Letter of Credit and the Letter of Credit has less than thirty (30) days until the expiration thereof.

*[Beneficiary]*

By: \_\_\_\_\_  
Title: \_\_\_\_\_



**GREEN SOURCE ADVANTAGE SERVICE AGREEMENT**  
**[Self-Supply Version – Energy and Capacity Only]**

**THIS GREEN SOURCE ADVANTAGE SERVICE AGREEMENT** (“Service Agreement”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between [\_\_\_\_\_] (“Customer”) and [Duke Energy Carolinas, LLC][Duke Energy Progress, LLC] (“Company”). Customer and Company may each be referred to individually as a “Party” and collectively, as the “Parties.”

**WHEREAS**, Customer has requested that Company purchase the Energy and Capacity generated by the Supply Resource, as defined below, under and in accordance with the terms, conditions and rules of the Company’s Green Source Advantage Program Rider approved by the North Carolina Utilities Commission (“Commission”), as may be modified from time to time (the “GSA Program”); and

**WHEREAS**, Company has agreed to procure the Energy and Capacity generated from the Supply Resource at the request and on behalf of the Customer under and in accordance with the terms and conditions of the GSA Program and this Service Agreement; and

**WHEREAS**, Customer has agreed to pay Company in accordance with the terms and conditions of this Service Agreement for the Energy and Capacity generated by the Supply Resource and delivered to Company.

**NOW THEREFORE**, in consideration of the promises and mutual covenants set forth herein and other good and valuable consideration, the sufficiency of which is acknowledged, and intending to be bound hereby, the parties agree as follows:

1. **Term:** This Service Agreement shall be effective upon execution and delivery by both Company and Customer (the “Effective Date”), and shall remain in full force and effect through [*insert date which is 60 days past delivery period specified in Section 4 below*] (the, “Term”). Customer understands and agrees that if this Service Agreement is terminated for any reason prior to completion of the Term or otherwise expires, such termination or expiration shall not relieve any party of any obligation accruing prior to the effectiveness of such termination or expiration. Furthermore, any obligations or liabilities that by their nature or express terms extend beyond the termination or expiration of this Service Agreement, including, without limitation, provisions relating to rates, billing, early termination charges, damages, limitations of liabilities, and any other provisions necessary to interpret or enforce rights and obligations shall survive the expiration or termination of this Service Agreement.
2. **Supply Resource:** The Supply Resource shall consist of that certain [\_\_\_\_mw][solar photovoltaic] renewable energy facility located at [\_\_\_\_\_] (the “Supply Resource”).
3. **Energy and Capacity; PPA.** The product purchased by Company at the request of Customer (the “Product”) includes the Energy and Capacity produced by the Supply Resource and delivered to Company pursuant to that certain Power Purchase Agreement entered into between Company and \_\_\_\_\_(the “Renewable Supplier”) dated as of \_\_\_\_\_ a copy of which is attached hereto as Exhibit “A” (the “PPA”). Defined terms used in this Section 3 which are not defined herein shall have the meaning ascribed to such

terms in the PPA.

4. **Delivery Period.** The delivery period (the “Delivery Period”) under this Service Agreement shall begin on the Commercial Operation Date of the Supply Resource (as defined in the PPA) and shall continue through the *[insert supply term selected by Customer – from the following term options: 2, 5, 10, 15 or 20 years- corresponding to the Term of the PPA]* anniversary of the Commercial Operation date.
5. **Estimated Annual Quantity.** The annual quantity of Product reserved by Customer hereunder shall be [xx] MW of Capacity and Energy based on the Supply Resource’s nameplate Capacity rating (the “Estimated Quantity”); Provided however, Customer understands and agrees that the Supply Resource is an intermittent resource without production guarantees, and Company will supply the Product generated by the Supply Resource actually delivered to Company under the PPA, which may be more than or less than the Estimated Quantity.
6. **Rates for the Product.** The rates for the Product delivered to Company under the PPA as contemplated hereunder shall be as set forth in the PPA.
7. **No Renewable Energy Certificates.** No renewable energy certificates or environmental attributes (collectively, “RECs”) are included under this Services Agreement and in no event shall Company be responsible for procuring, managing, reporting or retiring any RECs associated with the power generated by the Supply Resource for or on behalf of Customer under this Service Agreement or otherwise. Any agreement(s) for the procurement by Customer of RECs generated by the Supply Resource or any further adjustment to the Product rates, if any, shall be solely between Customer and the Renewable Supplier.
8. **GSA Administrative Service Charge.** As a participant in the GSA Program the Customer will be charged a monthly administrative service for primary and (xx) additional accounts as set forth in the GSA Rider Program (the “GSA Administrative Service Charge”).
9. **Billing.** In addition to its normal monthly retail bill from Company, Customer will be billed for the GSA Administrative Service Charge and the total cost of the Product delivered to Company under the PPA during each billing period (on a one-month lag). Amounts paid to Company under the consolidated bill will be applied first to Customer’s normal retail bill and then to this Service Agreement.
10. **Bill Credit for Power:** A monthly bill credit (on a one-month lag) for the avoided capacity and energy expense associated with the Energy and Capacity delivered to Company from the Supply Resource during the applicable billing period shall be provided to Customer (the “Bill Credit”). The Bill Credit shall be based on the lesser of:
  - a. The rates, as specified in Section 6 above for Energy and Capacity delivered to Company from the Supply Resource during the billing period; or
  - b. The Company’s avoided cost rate (as of the Effective Date), calculated as follows:
    - i. For PPAs with a term of 2 years the Company’s avoided cost rate shall be the Company’s 2 year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full term of the applicable PPA;
    - ii. For PPAs with a term of 5, 10, or 15 years the Company’s avoided cost rate shall

be the Company's 5 year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full term of the applicable PPA; and

- iii. For PPAs with a term of 20 years, the Company's avoided cost rate shall be deemed to be the capacity weighted average price of all proposals that have been selected to supply Standard Offer GSA Program capacity under the request for proposal issued by Company on [insert date of RFP] (the "RFP") under the Competitive Procurement of Renewable Energy Program instituted by Company pursuant to N.C. Gen. Stat. Section 62-110.8 (the "CPRE Program"), minus the GSA REC Value as determined by Company in a commercially reasonable manner; provided however, if no proposals have been selected to supply the GSA Program under the RFP, the Company's avoided cost rate shall be the Company's 5 year forecasted avoided cost rate, calculated by the Company based upon the methodology approved by the Commission, for the full 20 year term of the PPA.

#### 11. **Security:**

- a. **Performance Assurance.** Upon execution of this Service Agreement, Customer shall provide to Company and maintain for the benefit of Company Performance Assurance in the [following amount: \$\_\_\_\_\_] (the "Posting Requirement") as may be adjusted from time to time in accordance with this Article 12. Customer shall ensure that the Performance Assurance will remain in full force and effect, and outstanding in the required amount throughout the Term and for 90 days thereafter. To secure Customer's obligations of payment and performance under this Service Agreement, Customer grants to Company a present and continuing first priority security interest in and lien on all present and future Performance Assurance. Customer agrees to take such actions as Company requires to perfect Company's first-priority security interest in and lien on the Performance Assurance and liquidation of its proceeds, as applicable. Upon an Event of a Default by Customer, Company shall be entitled to draw on and retain the proceeds of any Performance Assurance to secure Customer's obligations hereunder, or to pay, net, recoup, set-off, liquidate, or otherwise receive payment of any amounts owed to Company under this Service Agreement. Customer's failure to fully maintain or provide Performance Assurance or otherwise fully comply with this Article 12 shall be a default by Customer and shall entitle Company to early termination damages as set forth herein.
- b. **Unsecured Credit Threshold Matrix.** For a Customer, or its Guarantor as applicable, that is Creditworthy and is not in default of any provisions under this Service Agreement or under its normal retail bill, shall be granted an unsecured credit limit under this Service Agreement only based on the below stated thresholds. In the event that the Credit Rating of Customer or its Guarantor changes during the Term of this Service Agreement, the amount of unsecured credit, if any, granted to Customer will be adjusted accordingly.

Credit Rating of the Customer or its Guarantor				Maximum Credit Limit (calculated as the lesser of the percentage of TNW and the applicable Credit Limit Cap below)		
S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap	Security Required (1)	Posting Requirement (2)
AA- and above	Aa3 and above	AA- and above	16%	\$35,000,000	TBD	TBD
A-, A, A+	A3, A2, A1	A-, A, A+	16%	\$25,000,000	TBD	TBD
BBB+	Baa1	BBB+	10%	\$20,000,000	TBD	TBD
BBB	Baa2	BBB	10%	\$15,000,000	TBD	TBD
BBB-	Baa3	BBB-	8%	\$10,000,000	TBD	TBD
BB+	Ba1	BB+	2%	\$2,000,000	TBD	TBD
BB	Ba2	BB	1%	\$1,000,000	TBD	TBD
BB-	Ba3	BB-		0	TBD	TBD

- (1) 5% of the total cost of the Estimated Quantity of Renewable Energy Product to be delivered under the PPA as estimated at the time of inception.
- (2) Greater of zero or (Security minus Maximum Credit Limit)
- (3) In the event that Customer enters into multiple agreements under the GSA Program, then the Security Required shall be aggregated across all such agreements and such aggregate amount, along with the Credit Limit Cap reflected in the above table based on the Credit Rating of Customer or its Guarantor, will be used for the purpose of determining the Posting Requirement in aggregate for all such agreements. If an entity wishes to act as Guarantor for multiple agreements under the GSA Program, then the Maximum Credit Limit Cap as established herein will be allocated to such agreements in the amounts requested by the Guarantor.

- c. **Definitions.** Except as otherwise defined herein, Capitalized terms used in this Article 10 shall have the following meanings:
- i. “Credit Rating” means, with respect to any applicable entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating. If the entity is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the entity is rated by three rating agencies and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. If an entity is not rated and requests that the Company assess its creditworthiness, then the Credit Rating shall be established by the Company in its sole discretion. In any case, the Credit Rating may be revised to reflect ongoing developments such as changes in agency ratings or material changes in an entity’s financial results as they occur.
  - ii. “Creditworthy” or “Creditworthiness” - means (i) a Person with an investment grade rating from two (2) of the three (3) Rating Agencies such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least (A) BBB- by S&P, if rated by S&P, (B) Baa3 by Moody’s, if rated by Moody’s, and (C) BBB- by Fitch, if rated by Fitch, respectively, and (ii) has satisfactory and verifiable creditworthiness determined in Company’s sole discretion. Notwithstanding the foregoing, an entity that does not have such a rating may submit complete audited financial statements (or substantially equivalent information certified by an appropriate officer of such entity) for review by the Company, which shall make a determination of the entity’s creditworthiness and assign an appropriate rating on a commercially reasonable basis for purposes of this Agreement. Unaudited or incomplete financial information will negatively impact the assigned rating.
  - iii. “Guarantor” means any Creditworthy Person having the authority and agreeing to guarantee the Customer’s obligations under this Service Agreement and is otherwise acceptable to Company in its sole discretion.
  - iv. “Guaranty” means a parent company guaranty, in substantially the form set forth in Exhibit B attached hereto, provided by a Guarantor in favor of Company guaranteeing the obligations of Customer under this Service Agreement.
  - v. “Fitch” - means Fitch Ratings Ltd. or its successor. If Fitch ceases to exist or publish ratings, Fitch will mean a nationally recognized rating agency mutually agreed upon by the Parties.
  - vi. “Letter(s) of Credit” means one or more irrevocable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank, which is not an

affiliate of Customer, which has and maintains a credit rating of at least A- from S&P and A3 from Moody's, in substantially the form set forth in Exhibit C attached hereto, or in such other form as Company deems acceptable in its sole discretion.

- vii. **Material Adverse Change.** A Material Adverse Change occurs with respect to Customer or its Guarantor if one exists, if (i) there is any material change in the condition (financial or otherwise), Credit Rating, net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of Customer or its Guarantor to fulfill its obligations under this Service Agreement or the guaranty as applicable; or (ii) there are reasonable grounds to believe that the Creditworthiness of such Person has become unsatisfactory or its ability to perform under this Service Agreement or the Guaranty (if applicable) has been materially impaired.
- viii. **"Moody's"** means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- ix. **"Person"** means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or governmental authority.
- x. **"Performance Assurance"** means collateral required under this Service Agreement in the form of: (i) cash, (ii) one or more Letter(s) of Credit, or a Guaranty acceptable to Company in its sole discretion, in each case that meets the requirements set forth in this Service Agreement, provided by Customer to Company, as credit support, adequate assurances, and security to secure Customer's payment and performance obligations under this Service Agreement.
- xi. **"Rating Agency" or "Rating Agencies"** - means the rating entities of S&P, Moody's or Fitch.
- xii. **"S&P"** means Standard & Poor's Ratings Services, Inc. or any successor-rating agency thereto.
- xiii. **"TNW"** means tangible net worth, calculated as total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles.
- d. **Adequate Assurances.** In the event that a Material Adverse Change has occurred and without limiting any payment obligations or any other existing performance assurance obligation, if any, set forth herein, Company may, from time to time, request, in writing, that Customer provide Company with Performance Assurance, including an additional amount of Performance Assurance over the amounts specified in Section 12(a) above, in an amount reasonably determined by Company. In the



event that Customer fails to provide the required amount of such Performance Assurance to Company within five (5) business days of receipt of Company's notice requesting the new or additional Performance Assurance, then Company may declare such failure an Event of Default and exercise any or all other remedies provided for hereunder or pursuant to law or equity.

- e. **Financial Disclosures.** Customer shall timely provide to Company financial information of Customer as follows: (i) within 120 days after the end of each fiscal year that this Service Agreement is effective a copy of Customer's annual report containing audited consolidated financial statements for such fiscal year; and, (ii) upon request of Company, a copy of Customer's most recent quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Customer attesting to their accuracy. The statements shall be prepared in accordance with generally accepted accounting principles or other procedures with which Customer is required to comply with under applicable law. If such information is available on a publicly available web site, then this requirement shall be deemed to be satisfied.
- f. **Set-off.** In addition to any rights of set-off a Party may have as a matter of law or otherwise and subject to applicable law, upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party under this Agreement and any other agreement between the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party under this Agreement and any other agreement between the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in a commercially reasonable manner estimate that obligation and set-off in respect of the estimate, subject to the relevant Party providing an accounting and true-up to the other Party after the amount of the obligation is ascertained.

12. **Events of Default.** An "Event of Default" means with respect to the non-performing Party (such Party, the "Defaulting Party"), the occurrence of any one or more of the following, each of which, individually, shall constitute a separate Event of Default:

- a. Failure by Customer to make any payment required hereunder when due if such failure is not remedied within ten (10) days after receipt of written notice of such failure.
- b. Failure of Customer to perform any of its obligations under Article 12 and such failure continues for a period of five (5) business days after receipt by Customer of written notice of such failure.
- c. Failure by a Party to perform any of its material obligation hereunder (other than such failures described in clauses (a), (b) and (d) of this Section 13), and such failure is not remedied within thirty (30) days after receipt by the defaulting Party of written notice

of such failure; provided, that so long as the defaulting Party has initiated and is diligently attempting to effect a cure, the defaulting Party's cure period shall extend for an additional reasonable period of time (not to exceed an additional thirty (30) days).

- d. If a Party or its Guarantor (i) makes an assignment for the benefit of its creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, (iii) has such petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing, (iv) becomes insolvent or, (v) is unable to pay its debts when due.

13. **Remedies Upon Default.** If an Event of Default with respect to a Defaulting Party has occurred and is continuing, then the other Party (such Party, the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective) as an early termination date to accelerate all amounts owing between the Parties, liquidate, net, recoup, set-off, and early terminate this Agreement and any other agreement between the Parties (such day, the "Early Termination Date")

14. **Early Termination Payment.** Customer understands and agrees that Customer's request and commitment for service under the GSA Program requires Company to secure the supply of the Product as requested by Customer. Customer understands and agrees that if the Customer, including any representative receiver or trustee appointed to act on behalf of the Customer rejects or terminates this Service Agreement prior the expiration of the Term; or if an Early Termination Date has been established as a result of a Customer Event of Default, then Customer shall pay to the Company early termination charges in the amount specified in the termination schedule attached hereto as Exhibit "D" (the "Termination Schedule") corresponding to the date of the termination, which shall be due and payable immediately upon the effective date of the early termination of this Service Agreement and may be set off against the Performance Assurance. This Section shall survive any early termination or expiration of this Agreement.

15. **Service Regulations.** Company's obligations under this Service Agreement shall be subject to the rules and requirements of the GSA Program and Company's Service Regulations approved by the Commission, as may be modified from time to time.

16. **Renewable Supplier's Performance.** Notwithstanding any provision to the contrary set forth in this Service Agreement, all of Company's obligations under this Service Agreement are contingent on the performance of the Renewable Supplier under the PPA. The failure or inability of the Renewable Supplier to honor its commitments under the PPA, shall excuse Company's performance under this Service Agreement to the extent such performance is prevented thereby. Company shall make a good faith attempt to enforce its rights under the PPA but shall be under no obligation to litigate any dispute or bring suit against the Renewable Supplier.



17. **Termination of the PPA.** In the event that the PPA is terminated, for any reason other than as a result of Company's default, prior to the end of the Term, then this Service Agreement will also terminate effective as of the date that the PPA is terminated and Company will have no further obligations hereunder.
18. **Confidentiality.** Customer may publicly announce that it is purchasing service from Company under this Service Agreement, the type of renewable Supply Resource (e.g. a "solar facility"), and the Term of this Service Agreement; *provided, however*, Customer shall not publicize and shall keep confidential all other information concerning the Supply Resource and terms and conditions set forth in this Service Agreement.
19. **Publicity.** Neither Customer nor Company shall make any use of the other Party's (or its affiliate's) name, logo, or likeness in any publication, promotional material, news release, or similar publicity material without the other Party's prior review, approval, and written consent; *provided, however*, any issuance or material approved by Company shall be limited to the non-confidential facts and will not imply, directly or indirectly, any endorsement, partnership, support, or testimonial of any Supply Resource.
20. **Limitations of Liabilities.** *NEITHER COMPANY NOR CUSTOMER SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, PUBLICITY, REPUTATIONAL, OR ANY OTHER INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, TORT, CONTRACT, OR OTHERWISE.* Customer agrees and understands that any and all payments, rates, charges, and/or damages permitted under the Rider GSA are and shall be deemed direct obligations and will not be excluded from liability or recovery under the Limitations of Liabilities provisions.
21. **Mutual Representations.** Customer and Company each hereby represents and warrants to the other the following: (i) each has the capacity, authority, and power to execute, deliver, and perform under this Service Agreement; (ii) this Service Agreement constitutes legal, valid, and binding obligations enforceable against it; (iii) each person who executes this Service Agreement on behalf of each party has full and complete authority to execute and bind such party to this Service Agreement as an authorized representative of such party; (iv) each is acting on its own behalf and has made its own independent decision to bind itself under this Service Agreement; and, (v) each has completely read, fully understands, and voluntarily accepts every provision of this Service Agreement.
22. **Governing Law.** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.
23. **Successors; Amendments.** This Service Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto. No amendment, modification, or change to this Service Agreement shall be enforceable unless agreed upon in a writing that is executed by each of the Parties hereto.

24. **Non-Waiver.** Neither Party will be deemed to have waived the exercise of any right that it holds under this Service Agreement or at law unless such waiver is expressly made in writing. Failure of a Party at any time, and for any length of time, to require performance by the other Party of any obligation under this Service Agreement shall in no event affect the right to require performance of that obligation or the right to claim remedies for breach under the Service Agreement or at law. No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Service Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.
25. **Counterparts.** This Service Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument. Delivery by a Party of an executed counterpart of a signature page of this Agreement by facsimile or electronic transmission (including PDF file) shall be effective as delivery of a manually executed counterpart hereof.

SIGNATURE PAGE FOLLOWS

**IN WITNESS WHEREOF**, on the day and year set forth below, the Company and Customer have caused this Service Agreement to be executed by their respective duly authorized representatives.

[DUKE ENERGY CAROLINAS, LLC][DUKE  
ENERGY PROGRESS, LLC]

BY: \_\_\_\_\_

NAME:

TITLE:

DATE:

CUSTOMER \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Exhibit A**  
**Power Purchase Agreement**

**[Attach Exhibit A]**

**OFFICIAL COPY**

**Apr 20 2018**

## Exhibit B Form of Guaranty

**THIS GUARANTY AGREEMENT** (this "Guaranty"), dated as of [date], is issued and delivered by [ **enter corporate legal name** ], a [state] [form of entity] (the "**Guarantor**"), for the account of [ **enter corporate name** ], a [state] [form of entity] (the "**Obligor**"), and for the benefit of [ **enter corporate name** ], a [state] [form of entity] (the "**Beneficiary**").

### Background Statement

WHEREAS, the Beneficiary and Obligor entered into that certain \_\_\_\_\_ dated (the "Agreement"); and

WHEREAS, Beneficiary has required that the Guarantor deliver to the Beneficiary this Guaranty as an inducement to enter into the Agreement.

### Agreement

**NOW, THEREFORE**, in consideration of the foregoing and for good and valuable consideration, the Guarantor hereby agrees as follows:

1. Guaranty; Limitation of Liability. Subject to any rights, setoffs, counterclaims and any other defenses that the Guarantor expressly reserves to itself under this Guaranty, the Guarantor absolutely and unconditionally guarantees the timely payment of the Obligor's payment obligations under the Agreement (the "Guaranteed Obligations"); provided, however, that the Guarantor's aggregate liability hereunder shall not exceed [amount] U. S. Dollars (U.S. [\$xx,xxx,xxx]).

Subject to the other terms of this Guaranty, the liability of the Guarantor under this Guaranty is limited to payments expressly required to be made under the Agreement, and except as specifically provided therein, the Guarantor shall not be liable for or required to pay any consequential or indirect loss (including but not limited to loss of profits), exemplary damages, punitive damages, special damages, or any other damages or costs.

2. Effect of Amendments. The Guarantor agrees that the Beneficiary and the Obligor may modify, amend and supplement the Agreement and that the Beneficiary may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Beneficiary.

3. Waiver of Rights. The Guarantor expressly waives (i) protest, (ii) notice of acceptance of this Guaranty by the Beneficiary, and (iii) demand for payment of any of the Guaranteed Obligations.

4. Reservation of Defenses. Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses that the Obligor may have to payment of all or any portion of the Guaranteed Obligations except defenses arising from the bankruptcy, insolvency, dissolution or liquidation of the Obligor and other defenses expressly waived in this Guaranty.

5. Settlements Conditional. This guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any monies paid to the Beneficiary in

reduction of the indebtedness of the Obligor under the Agreement have to be repaid by the Beneficiary by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force, and the liability of the Guarantor under this Guaranty shall be computed as if such monies had never been paid to the Beneficiary

6. Notice. The Beneficiary will provide written notice to the Guarantor if the Obligor defaults under the Agreement.

7. Primary Liability of the Guarantor. The Guarantor agrees that the Beneficiary may enforce this Guaranty without the necessity at any time of resorting to or exhausting any other security or collateral. This is a continuing Guaranty of payment and not merely of collection.

8. Representations and Warranties. The Guarantor represents and warrants to the Beneficiary as of the date hereof that:

- a. The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;
- b. The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- c. All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- d. This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

9. Nature of Guaranty. The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the Obligor under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by Beneficiary

concerning any provisions of the Agreement; the rendering of any judgment against the Obligor or any action to enforce the same; any failure by Beneficiary to take any steps necessary to preserve its rights to any security or collateral for the Guaranteed Obligations; the release of all or any portion of any collateral by Beneficiary; or any failure by Beneficiary to perfect or to keep perfected its security interest or lien in any portion of any collateral.

10. Subrogation. The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Guaranteed Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Guaranteed Obligations, the Guarantor shall be subrogated to the rights of Beneficiary against the Obligor, and Beneficiary agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. Term of Guaranty. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all the Guaranteed Obligations have been discharged, and (ii) [date] (the "Expiration Date"); provided however, the Guarantor will remain liable hereunder for Guaranteed Obligations that were outstanding prior to the Expiration Date.

12. Governing Law. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to principles of conflicts of law.

13. Expenses. The Guarantor agrees to pay all reasonable out-of-pocket expenses (including the reasonable fees and expenses of the Beneficiary's counsel) relating to the enforcement of the Beneficiary's rights hereunder in the event the Guarantor disputes its obligations under this Guaranty and it is finally determined (whether through settlement, arbitration or adjudication, including the exhaustion of all permitted appeals), that the Beneficiary is entitled to receive payment of a portion of or all of such disputed amounts.

14. Waiver of Jury Trial. The Guarantor and the Beneficiary, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

15. Entire Agreement; Amendments. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. This Guaranty may only be amended or modified by an instrument in writing signed by each of the Guarantor and the Beneficiary.

16. Headings. The headings of the various Sections of this Guaranty are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof.

17. No Third-Party Beneficiary. This Guaranty is given by the Guarantor solely for the benefit of the Beneficiary, and is not to be relied upon by any other person or entity.

**IN WITNESS WHEREOF**, the Guarantor has executed this Guaranty as of the day and year first above written

[Guarantor name]

By: \_\_\_\_\_  
Name:  
Title:

18. Assignment. Neither the Guarantor nor the Beneficiary may assign its rights or obligations under this Guaranty without the prior written consent of the other, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Beneficiary may assign this Guaranty, without the Guarantor's consent, provided such assignment is made to an affiliate or subsidiary of the Beneficiary

Any purported assignment in violation of this Section 18 shall be void and without effect.

19. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing or sent by electronic mail to the Guarantor or to the Beneficiary, as applicable, at its address as indicated below:

If to the Guarantor, at:

[Guarantor name]  
[Address]  
Attention: [contact]  
Email:[email address]

With a copy to:

[CRES name]  
[Address]  
Attention: [contact]  
Email:[email address]

If to the Beneficiary, at:

[Beneficiary name]  
[Address]  
Attention: [contact]  
Email:[email address]

or such other address as the Guarantor or the Beneficiary shall from time to time specify. Notice shall be deemed given (a) when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail or (b) when received, as evidenced by email confirmation, if sent by email and received on or before 4 pm local time of recipient, or (c) the next business day, as evidenced by email confirmation, if sent by email and received after 4 pm local time of recipient.

**Exhibit C**  
**Form of Letter of Credit**

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.: \_\_\_\_\_

Date: \_\_\_\_\_

Beneficiary:

[Duke Energy Carolinas, LLC][Duke Energy Progress, LLC]  
550 S. Tryon Street, DEC 40C  
Charlotte, North Carolina 28202  
Attn: Credit Risk Management Director

Ladies and Gentlemen:

By the order of:

Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We hereby issue in your favor our irrevocable letter of credit No.: \_\_\_\_\_ for the account of \_\_\_\_\_ for an amount or amounts not to exceed \_\_\_\_\_ US Dollars in the aggregate (US\$ \_\_\_\_\_) available by your drafts at sight drawn on [Issuing Bank] effective \_\_\_\_\_ and expiring at our office on \_\_\_\_\_ (the "Expiration Date").

The Expiration Date shall be deemed automatically extended without amendments for one year from the then current Expiration Date unless at least ninety (90) days prior to the then applicable Expiration Date, we notify you in writing by certified mail return receipt requested or overnight courier that we are not going to extend the Expiration Date. During said ninety (90) day period, this letter of credit shall remain in full force and effect

Funds under this credit are available against your draft(s), in the form of attached Annex 1, mentioning our letter of credit number and presented at our office located at [Issuing Bank's address must be in US] and accompanied by a certificate in the form of attached Annex 2 with appropriate blanks completed, purportedly signed by an authorized representative of the Beneficiary, on or before the Expiration Date in accordance with the terms and conditions of this letter of credit. Partial drawings under this letter of credit are permitted.

Certificates showing amounts in excess of amounts available under this letter of credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this letter of credit.

We engage with you that drafts drawn under and in conformity with the terms of this letter of credit will be duly honored on presentation if presented on or before the Expiration Date. Presentation at our office includes presentation in person, by certified, registered, or overnight mail.

Except as stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [Issuing Bank] under this letter of credit is the individual obligation of [Issuing Bank] and is in no way contingent upon reimbursement with respect hereto.

This letter of credit is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 ("ISP98"). Matters not addressed by ISP98 shall be governed by the laws of the state of New York.

We shall have a reasonable amount of time, not to exceed three (3) business days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly.

Kindly address all communications with respect to this letter of credit to [Issuing Bank's contact information], specifically referring to the number of this standby letter of credit.

All banking charges are for the account of the Applicant.

This letter of credit may not be amended, changed or modified without our express written consent and the consent of the Applicant and the Beneficiary.

This letter of credit is transferable, and we agree to consent to its transfer, subject to our standard terms of transfer and your payment to us of our standard transfer fee.

Very truly yours  
[Issuing Bank]

\_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Authorized Signer



This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

**ARTICLE I. ANNEX 1**

**FORM OF SIGHT DRAFT**

[Insert date of sight draft]

To: *[Issuing Bank's name and address]*

For the value received, pay to the order of \_\_\_\_\_ by wire transfer of immediately available funds to the following account:

*[name of account]*

*[account number]*

*[name and address of bank at which account is maintained]*

*[aba number]*

*[reference]*

The following amount:

*[insert number of dollars in writing]* United States Dollars

(US\$ *[insert number of dollars in figures]*)

Drawn upon your irrevocable letter of credit No. *[irrevocable standby letter of credit number]* dated *[effective date]*

*[Beneficiary]*

By: \_\_\_\_\_

Title: \_\_\_\_\_

This is an integral part of letter of credit number: *[irrevocable standby letter of credit number]*

**ARTICLE II. ANNEX 2**

**FORM OF CERTIFICATE**

[Insert date of certificate]

To: *[issuing bank's name and address]*

*[check appropriate draw condition]*

[\_\_\_\_\_] An Event of Default (as defined in the [Name of Agreement between [Beneficiary's Name] and [Insert Counterparty's Name] dated as of \_\_\_\_\_ (the "Agreement")) has occurred with respect to [Counterparty's Name] and such Event of Default has not been cured within the applicable cure period, if any provided for in the Agreement.

Or

[\_\_\_\_\_] [Counterparty's Name] is required, pursuant to the terms of the Agreement, to maintain a letter of credit in favor of [Beneficiary's Name], has failed to renew or replace the Letter of Credit and the Letter of Credit has less than thirty (30) days until the expiration thereof.

*[Beneficiary]*

By: \_\_\_\_\_  
Title: \_\_\_\_\_



**Exhibit D**  
**Early Termination Schedule**

**[Insert Schedule]**

**OFFICIAL COPY**

**Apr 20 2018**

**Duke Energy Carolinas, LLC's and  
Duke Energy Progress, LLC's  
GREEN SOURCE ADVANTAGE PROGRAM  
REPLY COMMENTS**

**Attachment C**

**Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's  
GSA Term Sheet (Self-Supply option)**

**Term Sheet for Identification of Proposed Generation Resources  
under the Green Source Advantage Program**

**This term sheet (“Term Sheet”) is provided to [Duke Energy Carolinas, LLC][Duke Energy Progress, LLC] (“Buyer”) by \_\_\_\_\_ (“Resource Supplier” or “Seller”) and \_\_\_\_\_ (“Customer”) as of \_\_\_\_\_, 20\_\_ (the “Effective Date”).**

This Term Sheet sets forth certain indicative terms of a potential transaction in which Seller would sell to Buyer the Product generated by the below identified Generation Resources as such terms are defined below in accordance with the terms, conditions and rules of the Buyer’s Green Source Advantage Program (the “Program”) approved by the North Carolina Utilities Commission (“Commission”), as may be modified from time to time (the “Proposed Transaction”).

**This Term Sheet is not intended to be an agreement between the parties or an offer to enter into such an agreement but rather is intend it to express Seller’s current intentions with regard to the Proposed Transaction. The Proposed Transaction contemplated in the Term Sheet is subject to legal, financial and business due diligence satisfactory to Seller and Buyer in their respective sole discretion, receipt of all necessary approvals, and the negotiation of a definitive renewable power purchase agreement and ancillary agreements thereto, and a Green Source Advantage Service Agreement between Customer and Buyer, and ancillary agreements thereto (collectively, the “Definitive Agreements”) mutually satisfactory to the parties thereto.**

**Resource Supplier:** [Insert full legal name of the entity contracting to sell the Renewable Energy Product generated from the Generation Resources (the “Seller”). If the Generation Resource is not owned by Seller please describe Seller’s right to sell the output including any lease, sale-leaseback or other arrangements with the facility owner.]

**Product:** Energy and Capacity.

**Generation Resources:** Please identify the facility supplying the Generation Resources including the following:

1. Facility Name:
2. Facility Address:
3. Description of Facility (include number, manufacturer and model of Facility generating units, and layout):
4. Nameplate Capacity Rating:
5. Fuel Type/Generation Type:
6. Site Map (include location and layout of the Facility, equipment, and other site details):

7. Delivery Point Diagram (include Delivery Point, metering, Facility substation):
8. Storage: [if applicable, identify the design and all material components of any battery storage or other energy storage device connected to or incorporated into the Facility]

**Interconnection:** [Identify the status of interconnection process, including any queue number; and any other arrangements needed to deliver to the Buyer.]

**Delivery Term:** [include proposed delivery term commencing with the expected commercial operation date.]

**Negotiated Contract Price:** [Include the negotiated contract price for the Product including On-peak summer, on-peak non-summer and off-peak]

<u>Relevant Portion of the Delivery Period</u>	<u>Contract Price</u>

**Operation Milestones:** [please complete each proposed operational milestone deadline as applicable]

<b>Deadline</b>	<b>Operational Milestone</b>
	Interconnection Agreement Executed
	Financing Milestone Commitment
	Final System Design under Interconnection Agreement
	Required Permits and Approval Deadlines
	Commencement Readiness Requirements
	Commercial Operation Date

**FERC Certification as a Qualifying Facility:** [Insert date on which the Facility was certified as a Qualifying Facility by the Federal Energy Regulatory Commission (FERC) and include docket number: \_\_\_\_\_]

**CPCN or ROPC.** Insert as applicable, the following:

- the date on which the Facility was granted a certificate of public convenience and necessity (“CPCN”), including docket number: \_\_\_\_\_
- the date on which a report of proposed construction (“ROPC”) was filed on behalf of the Facility: \_\_\_\_\_; or
- that the Facility is exempt from CPCN or ROPC requirements and reason for such exemption:

**Special Conditions:** [Insert any relevant special conditions related to the Generation Resource or conditions precedent to Seller committing to contract to deliver the Generation Resource on behalf of the Customer seeking to participate in the Program]



The undersigned has caused this Term Sheet to be executed and delivered to Buyer as of the Effective Date.

**[Seller]**

By: \_\_\_\_\_

Name:

Title:

**[Customer]**

By: \_\_\_\_\_

Name:

Title:

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Comments of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, filed in Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, was served electronically or via U.S. mail, first-class postage prepaid, upon all parties of record.

This the 20<sup>th</sup> day of April, 2018.

/s/E. Brett Breitschwerdt

E. Brett Breitschwerdt  
McGuireWoods LLP  
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Raleigh, North Carolina 27601  
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