

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 1170
DOCKET NO. E-7, SUB 1169

In the Matter of:)	
Petition for Approval of Green Source)	NCSEA’S COMMENTS
Advantage Program and Rider GSA to)	ON THE MOTION FOR
Implement N.C. Gen. Stat. § 62-159.2)	RECONSIDERATION OF
)	THE NORTH CAROLINA
)	CLEAN ENERGY BUSINESS
)	ALLIANCE
)	

**NCSEA’S COMMENTS ON THE MOTION FOR RECONSIDERATION OF THE
NORTH CAROLINA CLEAN ENERGY BUSINESS ALLIANCE**

The North Carolina Sustainable Energy Association (“NCSEA”), an intervenor in the above-captioned proceedings, files these comments pursuant to the *Order Requesting Comments* (“Order”) issued by the North Carolina Utilities Commission (“Commission”) on May 6, 2019, and in response to *Motion for Reconsideration of the North Carolina Clean Energy Business Alliance* (“Motion for Reconsideration”) filed by the North Carolina Clean Energy Business Alliance (“NCCEBA”) on May 1, 2019. NCCEBA’s Motion for Reconsideration proposes that the Commission reconsider its decision made in the February 1, 2019 *Order Modifying and Approving Green Source Advantage Program, Requiring Compliance Filing, and Allowing Comments* (“GSA Order”) with respect to Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC’s (“DEP”) (DEC and DEP, collectively, “Duke”) participation in the new Green Source Advantage (“GSA”) program as a GSA Renewable Supplier and, specifically, that Duke is entitled to cost recovery for its GSA Renewable Facilities via cost-of-service base rate recovery, rather than a “market-based” approach to cost recovery after the contract term ends between Duke

and the GSA Participating Customer. For all the reasons set forth below, NCSEA agrees and supports NCCEBA's Motion for Reconsideration and requests that the Commission amend the GSA Order accordingly.

I. ANALYSIS

As noted extensively in *NCSEA's Comments on Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Green Source Advantage Program Compliance Filing* ("NCSEA's Comments on Compliance Filing"), NCSEA has multiple concerns with the methods in which Duke seeks to recover costs for its participation in the GSA Program.¹ Here, NCSEA specifically agrees with NCCEBA – Duke's position that it may recover costs for its facilities via base rates after the end of the initial GSA Contract term is not established by statute nor is it equitable or a way for the GSA program to become a sustainable way for non-utility solar developers to participate in the program.

In the GSA Order, the Commission highlighted that Duke requested it be treated similarly to non-utility owners with regard to cost recovery for the GSA Renewable Facilities:

Duke proposes that it be authorized to recover costs for any Duke-owned renewable energy facility developed for and participating in the GSA Program on a "market-based recovery," after the initial term of the GSA Service Agreement expires. This proposal is similar to the recovery method expressly authorized under the CPRE Program by N.C.G.S. § 62-110.8(g). In support of its proposal, Duke argues that both third-party owned facilities and utility-owned facilities "should be given an equal opportunity to recover market based revenues after" the initial agreement concludes, at a rate that does not exceed the Companies' then-prevailing avoided cost rate established pursuant to N.C.G.S. § 62-156. The other parties have not specifically addressed this issue.²

¹ See NCSEA's Comments on Compliance Filing, pp. 2-7.

² GSA Order, p. 62.

However, despite Duke's request, the Commission rejected their cost recovery method request and, instead, stated that Duke-owned GSA facilities should be cost recovered via the "general rule":

The Commission understands that Duke's proposed market-based recovery follows naturally from Duke's misplaced view that the CPRE Program and the GSA Program are integrally linked. For reasons discussed above, the Commission does not agree with the view that the two programs should be linked in the way Duke proposed. The Commission also disagrees that Duke's proposal for market-based recovery beyond the term of the GSA agreement should be approved. The recovery allowed under N.C.G.S. § 62-110.8(g) is extraordinary in the context of the economic regulation of public service companies, which are generally entitled to recover the costs of service, plus a reasonable return on capital invested to serve the utility's customers. The Commission finds no compelling justification for departing from the general rule in this case.³

While NCSEA generally agrees with the position that the Commission took in disconnecting the Competitive Procurement of Renewable Energy ("CPRE") program from the GSA Program, the cost recovery determination by the Commission is unfair to the non-utility developers who were intended to compete to obtain contracts in the GSA Program by statute and is not specifically allowed by statute.

A. COST-OF-SERVICE BASED RECOVERY FOR DUKE FACILITIES IS NOT CONTEMPLATED BY STATUTE AND IS UNFAIR TO OTHER DEVELOPERS

The GSA Program is statutorily outlined in N.C. Gen. Stat. § 62-159.2 ("GSA Statute"). In pertinent part, subsection (e) of the states:

The Commission shall 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.

³ GSA Order, p. 62.

The GSA Statute does not mandate that a participating utility in the program be allowed to recover its costs for facilities through cost-of-service-based recovery. While the Commission has stated that the lack of statutory authorization is not persuasive where the resolution of an issue is delegated to the Commission⁴, NCSEA believes that the Commission's determination that Duke can recover its costs for its GSA Facilities through cost-of-service recovery goes against the legislative intent of the North Carolina General Assembly. Subsection B of N.C. Gen. Stat. § 62-159.2 outlines the competitive nature of the program:

Each public utility's program application required by this section shall provide standard contract terms and conditions for participating customers and for renewable energy suppliers from which the electric public utility procures energy and capacity on behalf of the participating customer. The application shall allow eligible customers to select the new renewable energy facility from which the electric public utility shall procure energy and capacity. 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. Eligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms.

The statute mandates that customers shall “select the new renewable energy facility from which” the utility shall procure energy and capacity. This dictates a consumer decision based upon any number of market forces and, therefore, contemplates a competitive market. Further, the provision explicitly states that customers “shall be allowed to negotiate with renewable energy suppliers regarding price terms.” Again, this portion of the statute contemplates a competitive market for the renewable suppliers in the GSA program. Furthermore, in the GSA Order, the Commission acknowledged that the intent of

⁴ “As with other issues in these proceedings, the lack of express statutory authorization for Duke's proposed requirement is not persuasive, because the resolution of this issue lies in the discretion delegated to the Commission through the GSA Statute.” GSA Order, p. 54.

the GSA Statute was to allow for a competitive marketplace for renewable energy and lessen the PURPA “must purchase” language:

However, the Commission, as addressed above, recognizes that House Bill 589, including the GSA Statute, display an intent on the part of the General Assembly to introduce an element of competitive pricing into the procurement of renewable energy and to reduce reliance on PURPA, which contains a “must purchase” requirement for investor-owned utilities in purchasing a QF’s electric output.⁵

Despite this acknowledgement, the GSA Order outlines a clear competitive advantage to Duke as a participating renewable energy supplier in the GSA Program. The unfair advantage exists as the non-utility developers must recover their remaining facility costs via the open marketplace following the GSA contract, while Duke can essentially guarantee a return on its GSA facility investments following the expiration of a GSA contract. This disparity is further highlighted when considering the range of contract terms – including contracts as little as two years in length – allowable in the GSA program. Such a short-term contract is clearly more palatable to Duke as it can guarantee its investments are returned following the two-year GSA term via retail rates, while a non-utility developer will be unable to compete with Duke to sell its facilities under such two-year terms. The financial risk between a non-utility developer and Duke in the GSA program as outlined in the GSA Order is disparate and anticompetitive.

The presumption by the Commission in the GSA Order that Duke can recover its post-GSA contract facility costs assumes that the GSA facilities are merely another generation asset, but fails to recognize non-utility facilities post-GSA contract. This position also belies the position taken by the Commission in Footnote 21 of the GSA Order highlighted above. The Commission’s determination fails both the non-utility developers

⁵ GSA Order, Fn. 21, p. 45.

(and their interest in participating in the program competitively) and also the consumers who are looking to participate and benefit from a robust competitive marketplace.

B. NON-PARTICIPATING CUSTOMERS WILL NOT BE HELD NEUTRAL IF DUKE IS PERMITTED TO RECOVER ITS FACILITY COSTS VIA COST-OF-SERVICE RECOVERY

As set forth above, the GSA Statute mandates that non-participating 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. Should Duke be permitted to recover its costs for GSA Facilities via cost-of-service recovery during the time period post-GSA Contract, then non-participating customers will be forced to pay for the facilities through their rates, and, accordingly, are not held neutral. Likewise, non-participating customers may actually be advantaged by having Duke acquire a facility that is already partially depreciated due to the GSA Customer and the initial GSA Contract. This partially depreciated facility will therefore be less expensive to add to the generation mix, and the non-participants would be given the benefit of discounted renewable generation.⁶

While the GSA Statute contemplates this neutrality to be maintained during the GSA Program, and this issue relates to facilities post-GSA contract, it is clear that the underlying financing of the facilities and their eventual market are clearly and intrinsically related to the implementation of the GSA Program by the Commission and as set out in the GSA Order. Accordingly, the GSA Facilities should also not impact non-participating customers even after the expiration of the related GSA Contract so as to allow non-

⁶ Of course, NCSEA is a proponent of additional renewable facilities being added to North Carolina’s generation mix; however, the GSA Statute is unequivocal in disallowing non-participant benefits such as less expensive solar facilities.

participating customers to maintain neutrality. NCSEA acknowledges that the Commission has avenues to protect non-participants' neutrality, such as the Certificate of Public Convenience and Necessity ("CPCN") vetting process, NCSEA believes that such processes are not intended to incorporate outlying GSA issues, such as non-participant neutrality or anticompetitive issues.

II. CONCLUSION

For the reasons set forth herein, NCSEA requests that the Commission grant NCCEBA's Motion for Reconsideration and, accordingly, amend the GSA Order to allow for all renewable developers, including Duke, be allowed the same market-based recovery as non-utility developers who participate in the GSA Program.

Respectfully submitted, this the 20th day of May, 2019.

/s/ Benjamin W. Smith
Benjamin W. Smith
Regulatory Counsel for NCSEA
N.C. State Bar No. 48344
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
919-832-7601 Ext. 111
ben@energync.org

CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing document by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 20th day of May, 2019.

/s/ Benjamin W. Smith
Benjamin W. Smith
Regulatory Counsel for NCSEA
N.C. State Bar No. 48344
4800 Six Forks Road, Suite 300
Raleigh, NC 27609
919-832-7601 Ext. 111
ben@energync.org