

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 of Duke)	DOD/FEA MOTION FOR ORDER
Energy Progress, LLC, and Duke)	EXTENDING DOD EXCLUSIVITY
Energy Carolinas, LLC, Requesting)	PERIOD FOR 12 MONTHS
Approval of Green Source Advantage)	
Program and Rider GSA to Implement)	
G.S. 62-159.2)	
)	

The Secretary of Defense, though duly authorized counsel and on behalf of the consumer interests of the United States Department of Defense and all other Federal Executive Agencies (“DOD/FEA”), hereby moves the State of North Carolina Utilities Commission Raleigh (“Commission”) for an order extending DOD’s exclusivity period for the Green Source Advantage Program and Rider GSA by an additional 12 months. In support of this Motion, DOD states as follows:

I

Through this proceeding, the Commission has established a Green Source Advantage Program and Rider GSA for the exclusive use of DOD and the University of North Carolina. DOD’s exclusivity period is about to expire, and DOD requests that the Commission extend DOD’s exclusivity rights to take 100 MegaWatts of carbon-pollution free electricity by another 12 months. Within that additional 12 months, DOD expects to complete all the necessary requirements to enter into a formal agreement with Duke Energy Progress to take power under the Green Source Advantage Program and Rider GSA.

II

On January 22, 2018, Duke Energy Progress, LLC (“DEP”) and Duke Energy Carolinas, LLC (“DEC”) jointly filed a proposed Green Source Rider advantage program and rider GSA, consistent with requirements of Section 3(b) of House Bill 589. DOD purchases large quantities of electric service from DEP in North Carolina. DOD installations served by DEP include, but are not limited to, Fort Bragg and Marine Corps Base Camp Lejeune. Fort Bragg is the largest military installation in the world and has approximately 50,000 personnel working or training at the installation at any one time.

III

DOD has developed a keen interest in utilizing the Green Source Advantage Program for Fort Bragg and Camp Lejeune. To date, DOD has not been able to match its federal contracting requirements and restrictions with the format of DEP’s new Green power program. DOD is pleased to report to the Commission that DOD is now in a position to utilize the Green power program. Nevertheless, it may still take up to another year for all requirements to be satisfied and a legal agreement to be executed between Duke Energy and the Department of Defense.

DOD is aware that North Carolina Session Law 2021-180, section 11.19(f1), provides that eligibility to participate in the Green Power program should be expanded to include any customer of a public utility that locates a new manufacturing facility at a project site that is subject to an agreement with the North Carolina Department of Commerce. Notwithstanding that provision in the state’s budget, DOD contends that the Commission should exercise its authority and maintain DOD’s exclusive right to take 100 Megawatts of electric power from Duke Energy Progress for another 12 months (through August 2023). DOD contends that

extending the exclusivity period is in the best interests of DOD and of North Carolina as it would represent a continued investment by the state in major military installations located in the state.

IV

DOD is undergoing a substantial transformation in its electricity use. Section 203 of Executive Order 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability* (December 8, 2021), requires that each federal agency, including the Department of Defense, increase its percentage of carbon pollution-free electricity so that it constitutes 100 percent of facility electrical energy use on an annual basis by 2030. (see accompanying Affidavit of Michael McGhee (“McGhee Affidavit”), paragraph (¶) 1.)

After the issuance of Executive Order 14057, DoD identified North Carolina as a state to host a pilot program to implement Section 203 of the Executive Order. North Carolina was chosen as a pilot location in part because of the 100 MW capacity set-aside for the military under the Duke Energy Green Source Advantage Program (the Program). (McGhee Affidavit, ¶ 2.)

Outside of negotiating special agreements with Duke Energy, participation in the Program is the only way that military installations in North Carolina can make progress toward achieving the carbon-free facility energy requirement set forth in Section 203. (McGhee Affidavit, ¶ 3.)

DoD has had several discussions with Duke Energy regarding participation in the Program. (McGhee Affidavit, ¶ 4.)

DoD obtained a copy of the Green Source Advantage Service Agreement after DoD identified North Carolina as a CFE Pilot location. Due to the unusual structure of the Green Source Advantage Service Agreement that DoD must execute in order to participate in the Program, much of which cannot be modified, it was not clear if DoD had applicable statutory

authority to execute a Green Source Advantage Service Agreement for a term matching the term of the underlying power purchase agreement between Duke Energy and a renewable energy generator. Over the course of several months, DoD worked with U.S. General Services Administration and the White House Council on Environmental Quality to devise a solution enabling DoD to use available statutory authority to participate in the program. (McGhee Affidavit, ¶ 5.)

The following are what remains to be done before DoD can subscribe to the Program [total estimated time is 12 months]:

- a. Execute a Request for Information to gauge the interest and ability of available generators who could enter into a PPA with Duke under the Program;
- b. Develop and issue a resultant Request for Proposal;
- c. Once proposals are received, finalize the details with any potential developer(s) for the scope, term, price, and NEPA requirements; and
- d. Submit the executed term sheet, application, and application fee. (McGhee Affidavit, ¶ 6.)

Once DOD has subscribed to the program by submitting an executed term sheet, application, and application fee, Duke and the selected generator(s) must execute a power purchase agreement; Duke, the generator(s) and DOD must execute the tri-party Green Source Advantage Service Agreement; and Duke and DOD must execute a new task order for the provision of electrical service that incorporates the Green Source Advantage Service Agreement. (McGhee Affidavit, ¶ 7.)

DOD recognizes that this request for an extension of DOD's exclusivity rights to the Green Power program will require the Commission to exercise considerable discretion in its

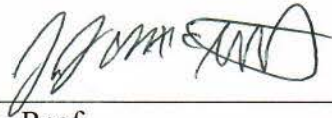
regulation of the electricity market in North Carolina. Nevertheless, to the extent that the Commission has the legal authority to extend DOD's exclusivity rights, DOD requests that the Commission do so as soon as possible.

DOD's position is that the DEP Green power program is an excellent program and DOD intends to utilize it if the opportunity remains open.

WHEREFORE, The United States Department of Defense and all other Federal Executive Agencies move the Commission to enter an order extending the exclusivity period for DOD/FEA to utilize the Green Source Advantage Program and Rider GSA by an additional 12 months.

Dated this 2 day of August, 2022

Respectfully submitted,



Paul A. Raaf

John J. McNutt (*motion for limited practice pending*)

Counsel for the United States Department of Defense and all other Federal Executive Agencies

AFFIDAVIT

Maryland

County of Montgomery

Mr. Michael F. McGhee; Executive Director, Climate Resilience Office of the Deputy Assistant Secretary of Defense (Environment & Energy Resilience). appearing before the undersigned notary and being duly sworn, says that:

1. Section 203 of Executive Order 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability* (December 8, 2021), requires that each federal agency, including the Department of Defense (DoD), increase its percentage of carbon pollution-free electricity (CFE) so that it constitutes 100 percent of facility electrical energy use on an annual basis by 2030.
2. After the issuance of Executive Order 14057, DoD identified North Carolina as a state to host a pilot program to implement Section 203 of the Executive Order. North Carolina was chosen as a pilot location in part because of the 100 MW capacity set-aside for the military under the Duke Energy Green Source Advantage Program (the Program).
3. Outside of negotiating special agreements with Duke Energy, participation in the Program is the only way that military installations in North Carolina can make progress toward achieving the carbon-free facility energy requirement set forth in Section 203.
4. DoD has had several discussions with Duke Energy regarding participation in the Program.
5. DoD obtained a copy of the Green Source Advantage Service Agreement after DoD identified North Carolina as a CFE Pilot location. Due to the unusual structure of the Green Source Advantage Service Agreement that DoD must execute in order to participate in the Program, much of which cannot be modified, it was not clear if DoD had applicable statutory authority to execute a Green Source Advantage Service Agreement for a term matching the term of the underlying power purchase agreement between Duke Energy and a renewable energy generator. Over the course of several months, DoD worked with U.S. General Services Administration and the White House Council on Environmental Quality to devise a solution enabling DoD to use available statutory authority to participate in the program.
6. The following are what remains to be done before DoD can subscribe to the Program [total estimated time is 12 months]:
 - a. Execute an RFI to gauge the interest and ability of available generators who could enter into a PPA with Duke under the Program;
 - b. Develop and issue a resultant RFP;

- c. Once proposals are received, finalize the details with any potential developer(s) for the scope, term, price, and NEPA requirements; and
 - d. Submit the executed term sheet, application, and application fee.
7. Once DoD has subscribed to the program by submitting an executed term sheet, application, and application fee, Duke and the selected generator(s) must execute a power purchase agreement; Duke, the generator(s) and DoD must execute the tri-party Green Source Advantage Service Agreement; and Duke and DoD must execute a new task order for the provision of electrical service that incorporates the Green Source Advantage Service Agreement.

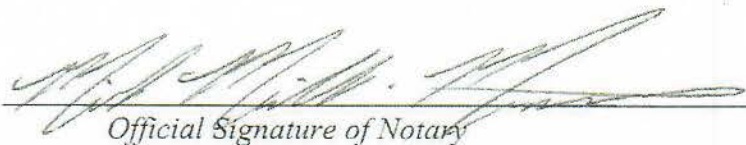
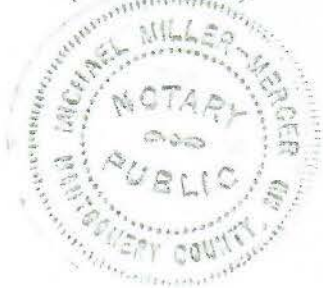


Affiant

Sworn to (or affirmed) and subscribed before me this the 1 day of August, 2022.

MICHAEL MILLER-MERCER
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires February 19, 2025

(Official Seal)


Official Signature of Notary

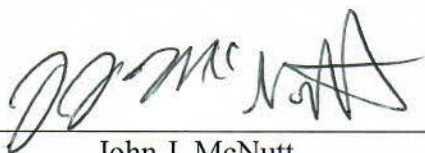
Michael Miller-Mercer, Notary Public
Notary's printed or typed name

My commission expires: 02/19/2025

VERIFICATION

John J. McNutt, first being duly sworn, deposes and says that he is an attorney with and for the United States Army Legal Services Agency; that he has read the foregoing Motion to Extend DOD Exclusivity Period and that the same is true of his personal knowledge, except as to any matters and things therein stated on information and belief, and, as to those, he believes them to be true; and that he is authorized to sign this verification on behalf of the United States Department of Defense and all other Federal Executive Agencies.

Dated this 2 day of August, 2022



John J. McNutt

State of VIRGINIA
County of FAIRFAX



Farzana Barjor Maneksha
Commonwealth of Virginia
Notary Public
Commission No: 7744219
My Commission Expires: Jan/31/2025

Sworn to and subscribed before me,

this the 02 day of August, 2022



Notary Public

[Affix SEAL OF NOTARY]

Farzana Maneksha

Printed Name of Notary Public

My Commission expires:

01/31/2025

CERTIFICATE OF SERVICE

I, John J. McNutt, hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Motion to Extend DOD Exclusivity Period by electronic mail or first class mail.

Dated this 2 day of August, 2022



John J. McNutt
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