

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

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

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

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

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

PURSUANT TO the North Carolina Utilities Commission’s (Commission) February 9, 2023 *Order Requesting Comments*, its March 28 *Order Granting Extension*, its May 12 *Order Granting Extension*, and its June 14 *Order Granting Second Extension*, each filed in substantially the same form in each of the above-captioned dockets, and Commission Rule R1-7, the Southern Alliance for Clean Energy (SACE) and the North Carolina Sustainable Energy Association (NCSEA) submit the following Joint Response to the Request for Procedural Relief and Reply Comments of CIGFUR II AND III (collectively, CIGFUR) filed June 23 in the GSAC dockets, E-2, Sub 1314 and E-7, Sub 1289 (CIGFUR Motion). This Joint Response also responds to Duke Energy Carolinas, LLC (DEC) and Duke Energy Progress, LLC’s (DEP) (collectively, Duke) Response to

CIGFUR's Request for Procedural Relief filed August 1 in the above-captioned dockets (Duke Response), which requests different relief from that requested by CIGFUR. This Joint Response incorporates by reference the April 25 Joint Initial Comments of Southern Alliance for Clean Energy, North Carolina Sustainable Energy Association, and Carolinas Clean Energy Business Association (Joint Initial Comments) and the June 23 Joint Reply Comments of the Southern Alliance for Clean Energy and the North Carolina Sustainable Energy Association (Joint Reply Comments), both filed in the above-captioned dockets.

1. Background

The Carolina Industrial Group for Fair Utility Rates II (CIGFUR II) and the Carolina Industrial Group for Fair Utility Rates III (CIGFUR III) (together with CIGFUR II, CIGFUR) filed a request for procedural relief in the Green Source Advantage Choice (GSAC) docket on June 23, 2023. CIGFUR requested the Commission temporarily stay the GSAC dockets for a limited time to allow the parties to continue working to resolve certain issues—in particular, additionality or “regulatory surplus”—and following the stay, to allow parties to file sur-reply comments on any remaining unresolved issues. SACE and NCSEA discussed regulatory surplus at length in their Joint Initial Comments and in brief in their Joint Reply Comments. SACE supported CIGFUR's request. Due to the press of business, NCSEA was not able to respond by CIGFUR's deadline but would have supported it as well.

The Public Staff requested, in its June 23 reply comments, that the Commission apply any relief that it granted to CIGFUR in the GSAC dockets to

the Clean Energy Impact (CEI) dockets as well. SACE and NCSEA support the Public Staff's request.

In its Response to CIGFUR's procedural motion, Duke made a series of different requests for relief.

Beginning with the GSAC dockets, Duke first requested the Commission simply approve the GSAC "Clean Energy and Environmental Attribute" (CEEA) Purchase Track with a total program capacity of 4,000 MW as it initially proposed, but with the disclaimer recommended by the Public Staff in its reply comments, which Duke agreed to in its reply comments.

Second, still with the GSAC dockets, Duke requested the Commission grant CIGFUR's request for a stay only to the extent necessary for the parties to discuss the Companies' proposed GSAC Power Purchase Agreement Track (PPA Track) and the Public Staff's proposed GSAC Request for Proposals Track (RFP Track). Duke dubbed these the "Regulatory Surplus Tracks."

Finally, Duke requested that the Commission decline to stay the CEI docket and issue an order on Duke's petition for approval of the CEI program.

2. Response

SACE supported, and NCSEA would have supported, CIGFUR's request for procedural relief and the Public Staff's request to apply the same relief to the CEI proceeding. As demonstrated in the Joint Initial Comments and the comments of other parties including the Public Staff, there are many ways to develop successful voluntary customer programs that will actually reduce greenhouse gas emissions by procuring additional clean energy above and

beyond what Duke will procure under business as usual. Programs that do so will be good not just for the climate but also for businesses that require access to regulatory-surplus clean energy to meet corporate goals. SACE and NCSEA remain ready and willing to discuss ways to develop regulatory-surplus voluntary customer programs, including both GSAC and CEI, in good faith. However, in light of Duke's response to CIGFUR's request for procedural relief, the time for further stakeholder discussion of the issue appears to have passed.

The Commission should deny Duke's requests for relief, as explained below. Regulatory surplus must be the foundation of the voluntary customer programs that the Commission approves under House Bill 951 (H951). As discussed at length in the Joint Initial Comments, regulatory surplus is required by H951; it is what customers expect from voluntary renewable energy purchases; and it is readily achievable through multiple different potential program designs. It would be inappropriate to carve the customer programs into regulatory-surplus tracks and non-regulatory surplus tracks as Duke has proposed because that would risk burying the Commission's fundamental decision in these proceedings—whether these programs will make a difference—in a seemingly tangential ruling on a procedural motion.

a. GSAC CEEA Purchase Track

The Commission should deny Duke's first request for relief, for approval of the "CEEA Purchase Track" as proposed plus a disclaimer. A marketing and tariff disclaimer stating that "the CEEAs procured through the GSA Choice Program are not certified by any third party and do not represent additional

renewable energy procured above and beyond what is required to comply with HB 951,” Duke Response 4 n.5, hardly improves the program. At best, if it functions as intended, the disclaimer would alert potential purchasers that the CEEAs they would purchase through the GSAC CEEA Purchase Track program were not accomplishing any carbon reductions. A disclaimer cannot bring a non-regulatory surplus program into compliance with the requirements of H951. Nor would a disclaimer addressed to GSAC participants inform the general public, which will rely on the information provided by GSAC participants. Duke customers interested in voluntary renewable programs surely intend to make clean energy claims to their customers, and if the programs are not in fact procuring regulatory-surplus clean energy those claims will be misleading.

Furthermore, it is far from clear that the disclaimer would function as intended. Customers do not always read disclaimers. And customers easily could misunderstand a disclaimer about regulatory surplus. Although the large customers eligible to participate in GSAC can generally be expected to be more sophisticated than average residential customers, regulatory surplus is a complicated and niche concept. To use the language in Duke’s footnote as an example, a customer easily could read that and still not understand that their purchase did not cause any clean energy deployment whatsoever.¹

¹ This problem is far greater still for the CEI program, wherein Duke proposes to rely on “all appropriate and best practice steps to ensure that the Program participants are fully aware that the CEEAs are not surplus to regulation.” Duke Energy Carolinas, LLC’s and Duke Energy Progress, LLC’s Reply Comments 9-11, *In the Matter of Petition of Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, Requesting Approval of Clean Energy Impact Program*, Docket Nos. E-2, Sub 1315, E-7, Sub 1288 (N.C.U.C. June 23, 2023).

If the Commission determines that it must approve the CEEA Purchase Track despite the lack of regulatory surplus, then it should require Duke to publish an additional notice advising non-participating customers that Duke is attributing greater emissions to them as a result of the CEEA Purchase Track. Customers who purchased CEEAs through a non-regulatory surplus CEEA Purchase Track would be claiming the associated carbon reduction credit, the carbon attributed bundled with a renewable energy credit to form the CEEA. Because the proposed CEEA Purchase Track would not bring on any additional clean energy beyond business as usual, participating customers would be claiming carbon reductions that otherwise would be counted towards the system as a whole. They would essentially be removing kWh from the denominator in the systemwide calculation of emissions intensity in tons of CO₂ per kWh. That means the same amount of system-wide emissions must be spread over fewer kilowatt-hours (kWh) of generation. To compare, a participating customer would calculate their emissions by first deducting from their overall usage all kWh covered by a CEEA that they purchased, and multiplying their remaining usage by the systemwide average emissions. A non-participating customer would simply multiply their usage by systemwide average emissions—but by a systemwide average emissions rate higher than it would have been if participating customers had not purchased CEEAs.² It is as though systemwide emissions were a fixed quantity of CO₂ in a balloon held by participants and non-

² This calculation would not be difficult to develop or to publish. It is a natural consequence of the calculation that Duke has proposed to conduct for participating customers, and during stakeholder discussions Duke proposed a customer-facing tool using essentially the calculations described.

participants, and participants simply squeezed one side of the balloon; the result is the same amount of CO₂ in the balloon, but the bulge is held by non-participating customers.

Adding this notice would not fix the proposed non-regulatory surplus CEEA Purchase Track. But if the Commission decides to approve that track, the notice would help customers to understand the emissions that Duke attributed to their usage. This could be particularly important for large customers with emissions reduction goals.

b. GSAC Regulatory Surplus Tracks

The Commission should also deny Duke's second request for relief, concerning a stay to discuss the "Regulatory Surplus Tracks." As noted, SACE and NCSEA remain ready and willing to discuss ways to develop regulatory-surplus voluntary customer programs in good faith at any time. And Duke misstated the facts when it asserted that further discussion concerning the GSAC CEEA Purchase Track is "not relevant" and "intervenors did not raise issues specifically applicable to the GSAC CEEA Purchase Track, which suggests this track is ready for Commission review and decision." Duke Response 5. In fact, as discussed in the Joint Initial Comments, Joint Reply Comments, and other intervenors' comments, regulatory surplus is required for all voluntary clean energy programs developed under H951. Regulatory surplus cannot be relegated to a potential bonus feature of certain "tracks" within the GSAC program. Accordingly, the primary reason SACE and NCSEA oppose Duke's second request for relief is not because they are unwilling to continue discussing

regulatory surplus, but because the discussion of achieving regulatory surplus should apply to all H951 voluntary customer programs, not just a subset of them. And as discussed below, discussions appear to have reached an impasse.

Furthermore, if the Commission grants Duke's proposal, then the "Regulatory Surplus Tracks" will be at risk of disappearing. Duke requested the non-regulatory surplus CEEA Purchase Track have total program capacity of 4,000 MW, which is the same as the total proposed program capacity, and there do not appear to be any guardrails limiting the CEEA Purchase Track's consumption of overall GSAC program capacity. Precisely because they would be derived from Duke's business-as-usual activities, the non-regulatory surplus CEEAs sold through the CEEA Purchase Track will likely be significantly cheaper than regulatory surplus clean energy, and the CEEA Purchase Track could swallow all program capacity.

c. CEI

Finally, SACE and NCSEA do not oppose Duke's third request, that the Commission issue an order on the CEI program based on the filings to date. However, again, all voluntary customer programs should procure regulatory-surplus clean energy and the Commission should rule on that question clearly and on the merits for all programs. Accordingly, the ruling would best be made in both dockets simultaneously. If the Commission grants Duke's third request and issues an order on the proposed CEI program without a stay, then it would be best to issue an order addressing regulatory surplus for all H951 voluntary customer programs at the same time.

The reason that SACE and NCSEA do not oppose Duke’s request to rule on the CEI program without further discussion, despite always being open to good-faith discussion of regulatory surplus and other issues, is that stakeholder discussion on the issue appears to have reached an impasse. In its Response, Duke proposed limiting even further *discussion* of regulatory surplus to certain potentially vanishing “tracks” within GSAC. Duke made no promises concerning regulatory surplus in those tracks; to the contrary, it reiterated its position that any form of regulatory surplus will be impossible. Duke Response 5 (stating “it is challenging for any amount of additional discussions to result in the Companies being able to provide the regulatory surplus”).³

Duke first made clear to stakeholders last August that it did not plan for any of its proposed voluntary customer programs to result in clean energy beyond business as usual. Following the conclusion of Duke’s formal stakeholder presentations, SACE, NCSEA, and other stakeholders sent Duke a letter on November 30, 2022, describing the problem in detail, and were able to schedule a meeting to discuss the issue with Duke representatives for February 7, 2023—but Duke filed its proposed programs first, on January 27. At the meeting, Duke representatives maintained that, despite having preemptively filed its proposed programs, Duke was open to discussion about how to achieve satisfactory programs. Duke appears to have continued to discuss the problem with CIGFUR and the Public Staff, with the result thus far being those parties’ apparent agreement to a “track” that would not result in regulatory-surplus clean energy and no firm commitment to include a track that would.

Again, SACE and NCSEA remain ready and willing to engage in good faith discussions of how to ensure that H951 voluntary customer programs achieve regulatory surplus. As described in their Joint Initial Comments, there are many potential programs that could do so. But given the context above, Duke's proposal to cabin discussion of regulatory surplus to limited "tracks" and conclude the discussion with voluntary reporting to the Commission appears to be intended to divert the central issue in the proceeding into a secondary process in order to let it pass away out of the Commission's sight. In light of that proposal, and Duke's forecast that no amount of further discussion will lead it to support achieving regulatory surplus, it seems clear that these programs will make a difference only if the Commission requires it.

3. Conclusion

In light of the stakeholder discussions and filings to date, it appears very likely that voluntary customer programs under H951 will comply with the law and deliver the additional clean energy and emissions reductions that customers want and expect only if the Commission requires it. SACE and NCSEA request that the Commission issue an order requiring that all H951 voluntary customer programs procure clean energy that is surplus to regulatory requirements. The Commission could do so in a stand-alone order on the issue, filed in all dockets, leaving other issues to be resolved separately as appropriate. Or it could do so

³ Duke stated that it was "willing to engage in good faith with the Public Staff and Intervenors," Duke Response 5, and SACE and NCSEA interpret this phrase to mean *all* interested intervenors. However, SACE and NCSEA note that Duke's discussions over the past months appear to have been with the Public Staff and CIGFUR alone. To the extent Duke intends to limit the intervenors invited to further stakeholder discussions concerning regulatory surplus in voluntary customer programs, or to select the intervenors eligible to participate, SACE and NCSEA further oppose Duke's requested relief.

in comprehensive merits orders in each of the dockets. If the Commission determines that further stakeholder discussion is appropriate, SACE and NCSEA wish to participate. However, any further stakeholder discussion of regulatory surplus should not depend on limiting the issue to certain “tracks” within the suite of voluntary customer programs. Thank you for considering this Joint Response.

Respectfully submitted this 9th day of August, 2023.

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CERTIFICATE OF SERVICE

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

This 9th day of August, 2023.

/s/ Nick Jimenez