

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1314
DOCKET NO. E-2, SUB 1315
DOCKET NO. E-7, SUB 1288
DOCKET NO. E-7, SUB 1289

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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)	REPLY COMMENTS
)	OF THE PUBLIC STAFF
In the Matter of)	
Petition of Duke Energy Progress, LLC, and)	
Duke Energy Carolinas, LLC, Requesting)	
Approval of Clean Energy Impact Program)	

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, pursuant to the Commission’s February 9, 2023 Order Requesting Comments and two subsequent extensions of time issued on May 12, 2023, and June 14, 2023, and respectfully submits the following reply comments in the above-captioned dockets.

BACKGROUND

1. On January 27, 2023, Duke Energy Progress, LLC (DEP) and Duke Energy Carolinas, LLC (DEC) (collectively, Duke or the Companies) filed their joint petitions (Petitions) for approval of the Green Source Advantage Choice (GSAC) Program and associated riders (Rider GSAC in DEC and Rider GSAC-1 in DEP) and the Clean Energy Impact (CEI) Program and associated riders (Rider CEI in

DEC and Rider CEI-1 in DEP) in the above-captioned dockets. The Petitions stated that the Programs had been developed to fulfill the directives of S.L. 2021-165 (HB 951).¹ The Petitions also stated that the proposed Programs incorporate stakeholder feedback gathered in a series of stakeholder meetings that began in June 2022.

2. On February 9, 2023, the Commission issued Orders Requesting Comments for both programs. Pursuant to extensions granted by the Commission on May 12, 2023, and June 14, 2023, initial comments were to be filed by April 25, 2023, and reply comments were to be filed by June 22, 2023.

3. In the GSAC Program dockets, the Attorney General's Office (AGO), the North Carolina Sustainable Energy Association (NCSEA), the Carolina Industrial Group for Fair Utility Rates II and III (collectively, CIGFUR), the Carolina Utility Customers Association (CUCA), the Southern Alliance for Clean Energy (SACE), the Clean Energy Buyers Association (CEBA), Google LLC (Google), the Carolina Clean Energy Business Association (CCEBA), and the United States Department of Defense and all other Federal Executive Agencies (DoD/FEA) have

¹ Section 5 of HB 951 requires the Commission to:

[E]stablish a rider for a voluntary program that will allow industrial, commercial, and residential customers who elect to purchase from the electric public utility renewable energy or renewable energy credits, including in any program in which the identified resources are owned by the utility in accordance with sub-subdivision b. of subdivision (2) of Section 1 of this act, to offset their energy consumption, which shall ensure that customers who voluntarily elect to purchase renewable energy or renewable energy credits through such programs bear the full direct and indirect cost of those purchases, and that customers that do not participate in such arrangements are held harmless, and neither advantaged nor disadvantaged, from the impacts of the renewable energy procured on behalf of the program customer, and no cross-subsidization occurs.

intervened. In the CEI Program dockets, the AGO, SACE, NCSEA, and CCEBA have intervened.

INITIAL COMMENTS OF THE PARTIES

1. On April 25, 2023, initial comments concerning both programs were filed by the Public Staff (Public Staff Comments), by the AGO (AGO Comments), and jointly by SACE, NCSEA, and CCEBA (collectively, SACE *et al.*) (SACE et al. Comments); On the same day, initial comments concerning only the GSAC Program were filed by CIGFUR (CIGFUR Comments), CEBA (CEBA Comments), DoD/FEA (DoD/FEA Comments), Google (Google Comments), and CUCA (CUCA Comments). The AGO filed corrected comments on April 26, 2023 (AGO Corrected Comments).

2. With regard to the GSAC Program, the Public Staff Comments raised concerns regarding whether the program would be attractive to potential participants due to its apparent lack of regulatory surplus, i.e., the procurement of renewable energy resources on behalf of participating customers that goes above and beyond existing regulatory requirements. (Public Staff Comments, 10). The Public Staff pointed out that regardless of which proposed option the GSAC Program participant chose, it would not add any incremental renewable energy to the system beyond that which is already required to comply with HB 951. As discussed in more detail below, the Public Staff recommended several changes to Duke's proposed GSAC Program to address its concerns. (Public Staff Comments, 15-20). With regard to the CEI Program, the Public Staff raised concerns with

respect to customer benefits and perception and the sources of the CEEAs. Specifically, the Public Staff stated that it was unable to determine how factors such as REC type and region have an impact on the REC price, and that customers would reasonably assume that the CEI Program, as designed, supports development of new renewable energy when, in the Public Staff's view, it does not. Accordingly, the Public Staff recommended that the CEI Program, as proposed, be denied, and recommended instead that the Companies' existing Renewable Advantage Program² be expanded from its current form.

3. The comments of SACE *et al.*, CUCA, CEBA, and the AGO echoed the Public Staff's Comments regarding regulatory surplus, raising concerns about whether the Clean Energy Environmental Attributes (CEEAs) proposed by Duke would satisfy potential GSAC Program customers' requirements for transparency and accountability, and whether the GSAC Program as a whole would result in any additional or accelerated renewable resources. Concerning the CEI Program, SACE *et al.* and the AGO noted similar concerns about whether the program, as filed, would ultimately satisfy customers' desire to reduce their carbon footprint.

4. For example, the AGO stated that "[t]he only way to avoid potentially misleading customers via double counting emissions reduction benefits is to ensure that the CEEAs used under the Programs are generated by renewable resources that are not being used to satisfy any other emissions reduction goal—

² The Companies' existing Renewable Advantage Program was approved by the Commission on October 15, 2019, in Docket Nos. E-2, Sub 1190; E-7, Sub 1185; and E-100, Sub 90.

whether it be the Companies' corporate carbon emission reduction goal or the requirements of N.C.G.S. § 62-110.9." (AGO Corrected Comments, 9).

5. CEBA discussed the carbon emission reduction requirements in HB 951 and the CEEAs in the GSAC Program proposal and stated that "counting the same energy attribute certificate for both purposes would restrict the customers that would subscribe to this program because they would be unable to count this clean energy towards their clean energy goals." CEBA added that:

Allowing for duplicative counting undermines that choice for customers to pay to participate in a program that purports to accelerate the decarbonization effort by their participation but, in reality, amounts to little more than a certificate should those resources also be claimed by the company as emissions reducing attributes and not additive projects.

(CEBA Comments, 5-6).

6. SACE *et al.* stated that GSAC Program customers purchasing CEEAs associated with Carbon Plan resources would not actually be contributing to any emission reductions. They argued that "[t]he essential feature of the voluntary customer programs established under H951 is that participation results in procurement of additional zero-carbon resources that would not have been procured otherwise," and that customers "want and expect regulatory surplus." (SACE *et al.* Comments, 3-4).

7. Google also noted the potential for the GSAC Program to assist in compliance with HB 951 and stated that "customer programs must be appropriately designed to accelerate the speed and lower the cost of overall grid decarbonization

as well as appropriately value clean energy resources when they are needed most.” (Google Comments, 5).

8. Parties made several recommendations to address the absence of regulatory surplus, such as: proactively addressing interconnection challenges (SACE *et al.* Comments, 14); aggregating small net-metered renewable energy facilities and selling the associated CEEAs as regulatory surplus (SACE *et al.* Comments, 18); excluding emission reductions associated with GSAC Program facilities from Carbon Plan compliance accounting (SACE *et al.* Comments, 11); revising the program to more closely resemble a proposed Clean Transition Tariff in Nevada³ that procures resources above and beyond the utility’s clean energy goals (Google Comments, 7); and redesigning the program to provide for CEEAs that are additional to those required under the Carbon Plan and Duke’s corporate emission reduction goals. (AGO Comments, 12).

9. In their initial comments, CIGFUR and the DoD/FEA did not raise the issue of regulatory surplus or additionality. CIGFUR emphasized the importance of ensuring that non-participating customers are held harmless (CIGFUR Comments, 4).

³ See Nevada Public Utilities Commission, Docket No. 22-06014. The Clean Transition Tariff was first proposed in the October 11, 2022 testimony of Carolyn A. Berry, Ph.D., on behalf of Google. On February 16, 2023, the Public Utilities Commission of Nevada declined to approve the proposed tariff but ordered NV Energy to hold stakeholder discussions regarding new tariffs in line with Google’s proposed Clean Transition Tariff in a new investigatory docket. Docket No. 23-04016 was opened to receive comments and updates related to the Clean Transition Tariff.

10. Several parties also noted positive aspects of the GSAC Program and proposed changes designed to improve the program or make it more attractive to potential customers. For example, intervenors praised Duke's inclusion of energy storage and other clean energy technologies that would allow time-alignment between GSAC customer usage and clean energy generation (Google Comments, 8; CUCA Comments, 3; CIGFUR Comments, 4; DoD/FEA Comments, 5). Duke's commitment to work with interested stakeholders to develop an hourly accounting and reporting system also drew praise from several intervenors representing potential GSAC Program customers (CIGFUR Comments, 5; Google Comments, 9; CEBA Comments, 6).

DISCUSSION AND RECOMMENDATIONS

11. With regard to the CEI Program, the Public Staff maintains the position taken in its initial comments. With the exception of the procedural relief requested *infra*, the discussion and recommendations herein pertain to the GSAC Program.

12. The Public Staff has met with the Companies to discuss the feasibility of the GSAC Program changes presented in the Public Staff's Comments. The Public Staff understands that Duke's primary objections to implementing the program as the Public Staff proposes center around concerns that such changes will require more resources to be interconnected each year than the system can handle, and that overall, the Public Staff's recommendations could increase costs for non-participants through a variety of direct and indirect mechanisms.

13. The Public Staff agrees that the GSAC Program must hold non-participating customers harmless, as required pursuant to HB 951. The program should be designed to address quantifiable cost shifts.

14. Based on the initial comments of intervenors who discussed concerns regarding regulatory surplus, and based on conversations with Duke, the Public Staff hereby submits proposed modifications to the recommendations in its initial comments. In its initial comments, the Public Staff identified three tracks for participation: (1) a GSAC CEEA Purchase Track,⁴ whereby a customer purchases CEEAs from renewable energy facilities that are procured as part of the Carbon Plan; (2) a GSAC Power Purchase Agreement (PPA) Track,⁵ whereby a customer negotiates independently with a renewable developer and submits an application and term sheet to the Companies; and (3) a GSAC Request for Proposals (RFP) Track,⁶ whereby the Companies would solicit interested GSAC customers during the annual procurement cycles for Carbon Plan resources and attempt to match GSAC customers to renewable projects that were not selected in the annual competitive procurement. The GSAC PPA and GSAC RFP Tracks are collectively referred to here as the Regulatory Surplus Tracks.

⁴ As described in paragraph 41 of the Public Staff's initial comments, as an alternative to the Public Staff's main recommendation, this track would be approved as proposed by the Companies but with an additional disclaimer. "As an alternative to the . . . GSAC RFP Track recommendation, the Commission could either deny the CEEA Purchase Track entirely, or approve it as-is but also require Duke to include a disclaimer in program marketing and tariffs informing potential customers that the CEEAs procured through the GSAC Program are not certified by any third party and do not represent additional renewable energy procured above and beyond what is already required to comply with HB 951." Public Staff Comments, 19.

⁵ As described in paragraphs 34 and 35 of the Public Staff's initial comments.

⁶ As described in paragraphs 39 and 40 of the Public Staff's initial comments.

15. The Public Staff recommends that the Commission approve the GSAC CEEA Purchase Track as filed by the Companies with the modification regarding disclosure proposed by the Public Staff in paragraph 41 of its initial comments. (Public Staff Comments, 19)

16. The Public Staff further recommends that the total program capacity of 4,000 megawatts (MW) proposed by Duke be approved, although it does not oppose increasing this program size as suggested by CIGFUR.⁷ However, to address the Companies' concerns regarding exceeding annual interconnection capabilities, the Public Staff recommends limiting the Regulatory Surplus Tracks to a subset of the total program capacity. As these two tracks create regulatory surplus over the next ten years, care must be taken to avoid overwhelming the Companies' grid and increasing procurement and operational costs for the Companies.

17. The Public Staff recommends that the Commission approve the Regulatory Surplus Tracks as proposed by the Public Staff, with a 1,000 MW (or 25% of total program capacity) carve-out over the estimated ten-year program term, with a maximum of 150 MW available each year to both tracks combined. Whether the carve-out is fully subscribed each year will determine whether the cumulative cap is reached in seven years or over a longer period. With this modification to the Public Staff's original proposal, the Companies would interconnect, at most, 1,000 MW of additional renewable energy resources above

⁷ CIGFUR Comments, 6-8.

and beyond the Carbon Plan requirements over the next ten years. As Section 5 of HB 951 requires that all direct and indirect costs of customers programs be borne by participating customers,⁸ the Public Staff is committed to working with the Companies to ensure that any quantifiable indirect costs associated with the Public Staff's proposed GSAC Program modifications are not borne by non-participating customers.⁹

18. The Public Staff also recommends that the Commission require Duke to increase its annual procurements to account for previously subscribed GSAC Program capacity, as described in paragraph 35 of its initial comments. The Public Staff, however, recognizes that continually adjusting annual procurements for the foreseeable future may not be practical or feasible. For example, if by 2032 the GSAC Program is still open, and 900 MW of Regulatory Surplus Track capacity has been subscribed, the Companies would add 900 MW to their approved 2032 procurement target. In its initial comments, the Public Staff did not address a date by which this capacity would "roll off" of the adjustment mechanism.

⁸ HB 951 requires that program participants "bear the full direct and indirect cost of those purchases, and that customers that do not participate in such arrangements are held harmless, and neither advantaged nor disadvantaged, from the impacts of the renewable energy procured on behalf of the program customer, and no cross-subsidization occurs."

⁹ It is notable that not all indirect impacts can be quantified, particularly those that are far removed from the customer program. For example, a GSAC solar facility will gain site control over multiple parcels of land to build the solar array. The demand for land associated with the GSAC solar facility may result in increased land costs for future solar facilities used for Carbon Plan compliance, which could increase costs for non-participant ratepayers. In the alternative, the property tax income associated with a GSAC solar facility will benefit citizens of the county in which it is located; if any of those non-participant citizens are Duke ratepayers, they will benefit through increased county revenue from the GSAC facility. These examples are presented to illustrate how the indirect effects from incremental new solar may be difficult to quantify.

19. Accelerating the deployment of clean energy resources results in regulatory surplus. If the GSAC Program provides regulatory surplus, it will almost exclusively be in the form of accelerated, not additional, clean energy resources. This is because by 2050, the Companies are required to have a carbon-neutral system; at that point, the grid should only have resources needed to meet demand, and regulatory surplus becomes essentially impossible. In other words, any resources procured over the next ten years that are considered regulatory surplus will in fact simply be resources that would have eventually been built to comply with the 2050 goal, but that have been accelerated due to the participation of a large electricity customer seeking to meet its own clean energy goals.

20. Thus, the Public Staff recommends that Regulatory Surplus Track capacity “roll off” after a period of five years. In other words, in each annual procurement required to procure Carbon Plan resources, the Companies should add to the Carbon Plan target the total amount of Regulatory Surplus Track capacity with firm commitments that has been subscribed over the past five years. GSAC Program capacity procured prior to that five-year window will no longer be included in the annual procurement adjustment mechanism. This will ensure that GSAC Program customers who participate in one of the Regulatory Surplus Tracks will have produced regulatory surplus for at least five years.

21. The Public Staff continues to support the energy storage or other clean technology option proposed by Duke that allows larger customers to time-align clean energy generation with their own usage.

22. In sum, the Public Staff recommends approval of Duke's proposed CEEA Purchase Track, modification of the proposed GSAC PPA Track, and creation of a new GSAC RFP Track to allow for the participation of as many large non-residential customers as possible, up to the proposed annual and cumulative program limits and future procurement adjustments, as described in these reply comments. An updated diagram of proposed GSAC tracks and options illustrating the recommendations of the Public Staff as discussed in these comments is presented as Public Staff Reply Exhibit 1.

23. The Public Staff also notes that on April 27, 2023, the Center for Resource Solutions (CRS) issued version 4.2 of its Green-e® Renewable Energy Standard for Canada and the United States, which was updated to include a market advisory and policy update applicable to North Carolina.¹⁰ The market advisory states, in part:

In order to prevent double counting of renewable generation sold in Green-e® Energy certified products, RECs and renewable electricity generated by Duke Energy owned generators in North Carolina from facilities built on or after January 1, 2023 are not currently eligible for Green-e® Energy certified sales, this includes the 45% of MWh from third party solar developed pursuant to HB 951, of which Duke purchases the energy and environmental attributes. This policy is effective immediately and will remain in effect until further notice.

¹⁰ Available at <https://www.green-e.org/docs/energy/Green-e%20Standard%20US.pdf>.

24. This guidance appears to present a challenge to third-party certification of CEEAs and renewable energy certificates associated with renewable generation in North Carolina. The Public Staff believes that additional time would allow for further discussion amongst the parties regarding potential program modifications and for discussions, potentially with CRS, to evaluate whether program modifications that result in resource acceleration as proposed by the Public Staff could result in regulatory surplus.

25. As such, the Public Staff supports CIGFUR's request for procedural relief in the GSAC Program dockets, which it understands will be filed with CIGFUR's reply comments. To the extent that such relief is granted, the Public Staff hereby requests that the same procedural relief sought by CIGFUR with respect to the GSAC Program dockets be similarly applied to the CEI Program dockets. If the Commission declines to allow CIGFUR's requested stay, the Public Staff respectfully requests that the Commission approve the GSAC Program with the Public Staff's proposed modifications, as detailed in its initial comments and modified in these reply comments.

Respectfully submitted, this the 23rd day of June, 2023.

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CERTIFICATE OF SERVICE

I certify that a copy of these Comments has been served on all parties of record or their attorneys, or both, in accordance with Commission Rule R1-39, by United States Mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 23rd day of June, 2023.

Electronically submitted
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Program Limits:

- 4,000 MW Total GSAC Program
- 150 MW annually in RFP and PPA Tracks

