

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of | |
| Petition of Duke Energy Progress, LLC, |) ORDER REQUESTING COMMENTS |
| and Duke Energy Carolinas, LLC, |) ON AGREEMENT AND STIPULATION |
| Requesting Approval of Green Source |) OF SETTLEMENT RESOLVING |
| Advantage Choice Program and |) CONTESTED ISSUES AND |
| Rider GSAC |) RECOMMENDING APPROVAL OF |
| |) MODIFIED PROGRAMS |

BY THE CHAIR: Based upon the entire record of the above-captioned proceedings, the Chair finds good cause to request comments from the parties outlining their positions on the Agreement and Stipulation of Settlement Resolving Contested Issues and Recommending Approval of Modified Programs (Stipulation) filed by Duke Energy Carolinas, LLC (DEC), and Duke Energy Progress, LLC (DEP, and collectively with DEC, Duke), on April 12, 2024, in the above-captioned dockets.

BACKGROUND

On January 27, 2023, Duke filed a petition in the above-captioned dockets requesting Commission approval of the Green Source Advantage Choice Program (GSA Choice Program) tariffs. The GSA Choice Program is designed to supplant the current Green Source Advantage (GSA) Program and GSA Bridge Program. As proposed, the GSA Choice Program would allow large-load commercial and industrial customers to contract with Duke to provide Clean Energy Environmental Attributes (CEEAs), which are Renewable Energy Certificates (RECs) bundled with carbon emission attributes associated with the generation from both Duke-owned generation assets and third-party-owned generation assets that have a purchase power agreement (PPA) with either DEP or DEC, or through a third-party agreement between DEP or DEC, a renewable developer, and the customer in the same manner as the legacy GSA Program. The GSA Choice Program offers a non-energy storage option and an energy storage or other clean energy facility option. The energy storage option would assist customers that want to virtually time-align their energy consumption with renewable energy output by shifting solar energy produced during daylight hours to non-daylight hours. Duke states that it is implementing an enterprise-wide internal tracking system for CEEAs that would be used to facilitate tracking and authentication of the carbon reduction attributes, but that it does not plan to have a third-party certify the CEEAs. Duke further states that the GSA Choice Program is one of several new programs it will propose to

fulfil the directives of Section 5 of S.L. 2021-165 (HB 951) to offer voluntary renewable energy programs.

On February 9, 2023, the Commission issued an order setting the timeframe in which interested persons could petition the Commission to intervene and parties could file comments on Duke's GSA Choice Program proposal.

Through various orders, the Commission permitted the intervention of the following parties: the Clean Energy Buyers Association (CEBA); the Carolina Industrial Group for Fair Utility Rates II and the Carolina Industrial Group for Fair Utility Rates III (together, CIGFUR); the Carolina Utility Customers Association, Inc. (CUCA); the North Carolina Sustainable Energy Association (NCSEA); the Southern Alliance for Clean Energy (SACE); Google LLC (Google); the Carolinas Clean Energy Business Association (CCEBA); and the United States Department of Defense and all other Federal Executive Agencies (DoD/FEA). The intervention of the Public Staff – North Carolina Utilities Commission (Public Staff) is recognized pursuant to N.C.G.S. § 62-15(d) and Commission Rule R1-19(e). The North Carolina Attorney General's Office (AGO) is afforded intervention as of right on behalf of the using and consuming public pursuant to N.C.G.S. § 62-20.

On April 25, 2023, the following parties filed initial comments on Duke's GSA Choice Program proposal: CIGFUR, CEBA, Google, DoD/FEA, the Public Staff, CUCA, the AGO, and filing jointly, SACE, NCSEA, and CCEBA.

On June 23, 2023, the following parties filed reply comments: CEBA, the Public Staff, CIGFUR, DoD/FEA, Google, CUCA, Duke, and filing jointly, SACE and NCSEA. CCEBA filed a letter in lieu of reply comments.

Also, on June 23, 2023, while not having filed a petition to intervene or being allowed to intervene in the dockets, the Southeast Sustainability Directors Network (SSDN)¹ filed a letter regarding Duke's GSA Choice Program proposal (SSDN Letter).

In regard to the issue of regulatory surplus, in initial and reply comments, CEBA, Google, DoD/FEA, the Public Staff, CUCA, the AGO, SACE, NCSEA, and CCEBA noted that Duke's GSA Choice Program proposal does not result in new, additional renewable energy resources that are "surplus" to the requirements of HB 951. In joint initial comments, SACE, NCSEA, and CCEBA argued that HB 951 requires that the GSA Choice Program achieve regulatory surplus and requests that the Commission deny any program that does not include regulatory surplus. SACE, NCSEA, and CCEBA requested that the Commission direct Duke to work with stakeholders to refine the program to achieve regulatory surplus. Joint Initial Comments at 2.

¹ The SSDN Letter states that the SSDN is a network of local government sustainability practitioners representing over 100 city, county, and tribal governments across the Southeast, including 28 local governments in North Carolina. SSDN Letter at 1.

The Public Staff stated in its initial comments:

In general, the Public Staff believes that the lack of regulatory surplus inherent to this proposed program could open the program and its participants to claims of “greenwashing,” whereby entities claim they are supporting renewable energy without meaningfully contributing to the incremental procurement of renewable energy. . . . The Companies defend the program’s lack of regulatory surplus by referencing the physical limit to annual interconnection of new generation resources, reiterating arguments made during the Carbon Plan proceedings. The Companies stated in discovery that procuring additional solar that cannot be interconnected in a timely fashion will result in excess solar PPAs that could have been procured at a later date, and possibly at lower prices. The Public Staff disagrees for two reasons.

. . .

The Public Staff is supportive of appropriate interconnection limits in the Carbon Plan modeling but does not believe those limits should be used to justify a voluntary renewable energy purchase program with no additionality.

Public Staff Initial Comments, 14, 15.

In initial and reply comments, several intervenors stated that regulatory surplus is necessary for third-party certification of the CEEAs. For example, Google stated that regulatory surplus is necessary for such certification and that a lack of additionality could lead to improper double counting of carbon reduction benefits. Google Reply Comments, 2-3.

In its reply comments, CIGFUR filed a request for procedural relief (Request for Procedural Relief) noting that a significant outstanding issue is the regulatory surplus issue. Procedural Relief and Reply Comments, 2. CIGFUR requested that the Commission “temporarily stay these dockets for a limited, time-certain period to allow the parties to continue working in good faith in hopes of resolving certain outstanding issues[.]” *Id.* at 3, 8.

On June 23, 2023, Duke filed reply comments. In regard to the issue of regulatory surplus, Duke stated that HB 951 does not require regulatory surplus for the GSA Choice Program, and that the practical impacts of requiring regulatory surplus have not been fully considered by the intervenors, as regulatory surplus would cause significant impacts to Duke’s system and would be expensive. Duke disputed that the proposed program would result in “greenwashing” or double-counting of CEEAs.

On August 1, 2023, Duke filed a response to CIGFUR’s Request for Procedural Relief. Duke recommended that the Commission approve Duke’s GSA Choice Program

in part and grant the requested stay only to the extent necessary for the parties to discuss the remaining contested issues.

On August 9, 2023, SACE and NCSEA filed a response to CIGFUR's Request for Procedural Relief and Duke's response thereto, and on August 11, 2023, CCEBA filed a letter in response to CIGFUR's Request for Procedural Relief and Duke's response. CCEBA's letter stated that "CCEBA therefore urges the Commission to grant CIGFUR's request for procedural relief as to the GSAC dockets and order Duke to continue discussions with Intervenors until a date certain, with all parties to address any unresolved issues through final sur-replies." CCEBA August 11, 2023 Letter, 3 (pages unnumbered).

On August 28, 2023, Duke filed a supplemental reply letter addressing the August 9 and 11, 2023 comments of SACE, NCSEA, and CCEBA.

On September 5, 2023, SACE and NCSEA filed a motion (Motion for a Technical Conference) requesting that the Commission hold a technical conference on the issue of regulatory surplus "and any related issues it deems proper before rendering decisions on Duke's proposed GSAC and CEI programs or any other H951 voluntary customer programs Duke might propose." Motion for a Technical Conference, 20.

On September 13, 2023, CIGFUR filed a letter responding to SACE and NCSEA's Motion for a Technical Conference (CIGFUR Letter). The CIGFUR Letter stated that it "remains CIGFUR's goal to work together with all parties towards what CIGFUR hopes will be a mutually-agreeable consensus position to resolve the issue of regulatory surplus." CIGFUR Letter, 1. However, CIGFUR stated that it was "not convinced that a technical conference would help to resolve or otherwise clarify the issue of regulatory surplus and its potential implications for customers who elect to participate in the GSA-C Program." *Id.* at 2.

On September 15, 2023, Duke filed its response to SACE and NCSEA's Motion for a Technical Conference, which stated that "[Duke], the Public Staff, and CIGFUR are all committed to engaging in further discussions regarding Regulatory Surplus Tracks between now and November 15 and will keep the Commission apprised of the same." Duke Response to Joint Motion for a Technical Conference, ¶ 5.

On October 4, 2023, SACE and NCSEA filed comments in support of the Motion for a Technical Conference.

On February 20, 2024, the Commission issued an Order Requiring Update on Stakeholder Engagement and Efforts to Resolve Outstanding Issues which required Duke provide an update regarding its then-recent stakeholder engagement and related efforts to resolve the outstanding issues between the parties.

On February 27, 2024, Duke filed its Update on Stakeholder Engagement and Customer Programs (Update) stating that since September 2023, it had been actively engaged with stakeholders on issues related to regulatory surplus and had spent

significant time and resources to develop an additional option for the GSA Choice Program called the Resource Acceleration Option (RAO).

Duke's Update also noted that, on November 8, 2023, SACE and NCSEA indicated that they could not support the RAO and listed their concerns with the RAO. Duke's Update explained that, on November 17, 2023, Duke responded to the concerns expressed by SACE and NCSEA. Duke's Update also indicated that, on December 20, 2023, SACE and NCSEA requested a meeting with Duke on the RAO that was ultimately extended to all stakeholders and held on January 11, 2024. Further, Duke explained at the time it was working toward a settlement with the Public Staff and CIGFUR on a modified GSA Choice Program design incorporating a RAO, and that it intended to circulate a draft of the proposed settlement to all intervening parties for their review and consideration by March 1, 2024. Finally, Duke stated that it then planned to file the stipulation and updated GSA Choice tariffs with the Commission in mid-March, 2024 to resolve all outstanding issues in the GSA Choice dockets among the stipulating parties.

On March 1, 2024, SACE, NCSEA, and CCEBA jointly filed a response to Duke's Update (Joint Response) which stated that "[t]he central problem with Duke's characterization of its efforts to resolve the outstanding issues in these proceedings—and regulatory surplus in particular—is that it conflates stakeholder engagement with settlement negotiations." Joint Response, 1. The Joint Response further explained that SACE, CCEBA, and NCSEA were not invited to Duke's settlement discussions with the Public Staff and CIGFUR, and "were forced to conclude that stakeholder discussions had reached an impasse . . ." *Id.* at 3. Noting that "Duke, the Public Staff, and CIGFUR evidently continued discussions and Duke later circulated the proposed [RAO] to counsel for all parties on October 23, 2023[.]" the Joint Response stated that SACE and NCSEA "expressed appreciation for the effort that Duke put into developing the RAO, but maintained concerns and could not support it as proposed." *Id.* at 4. "Through discussions with counsel for large-customer groups, SACE and NCSEA came to understand that while the RAO option represented progress towards regulatory surplus, it would not work for any large customers for which the initially proposed GSAC and CEI programs would not work, considering their corporate commitments." *Id.*

The Joint Response stated that on January 11, 2024, at stakeholders' request, Duke agreed to a follow-up discussion of its RAO proposal and agreed to expand the discussion to include all interested parties. "While some progress was made improving the RAO as proposed by Duke, no agreement was reached, particularly on regulatory surplus. Evidently Duke continued discussions with the Public Staff and CIGFUR." *Id.* at 5. The Joint Response contended: ". . . [S]electing merely two intervenors for settlement discussions does not constitute the rosy picture of a company 'actively engaged' with stakeholders and 'collaborative efforts,' such as Duke presented. Proper stakeholder engagement should allow all parties to engage and advocate for their positions." *Id.* The Joint Response concluded: "It is not surprising, then, that Duke's anticipated resolution of the outstanding regulatory surplus issue is not consensus . . . Although the RAO is an incremental improvement, it too is still far from sufficient." *Id.* at 5-6.

On March 28, 2024, Duke filed an Update to the Green Source Advantage Choice Program Report Issues (Second Update). The Second Update noted that Duke had circulated the draft settlement to all parties on February 29, 2024, and since then, some parties had requested additional stakeholder engagement related to the settlement and that several meetings had already occurred in March, 2024. The Second Update further expressed Duke's intent "to continue this engagement" and described plans to convene with interested parties in the near term. Accordingly, the Second Update explained that Duke was holding off on filing the settlement stipulation with the Commission as originally indicated in the Update.

Finally, on April 12, 2024, Duke filed the above-referenced Stipulation among Duke, the Public Staff, and CIGFUR (Stipulating Parties). The Stipulation adds a proposed RAO to supplement Duke's proposed GSA Choice Program. Duke notes that it met with interested parties to further discuss both the RAO and a proposal from CCEBA. However,

[a]fter considering CCEBA's proposals, the Stipulating Parties believe that the Stipulation included herein presents the best path for providing an attractive offering to interested customers while holding non-participants harmless, ensuring non-participants are "neither advantaged nor disadvantaged, from the impacts of the renewable energy procured on behalf of the program customer, and no cross-subsidization occurs," as required by Section 5 of House Bill 951 (S.L. 2021-165).

Stipulation Cover Letter, 1-2.

Duke explains that the newly proposed RAO provides customers the option to participate in acceleration of additional renewable energy facilities incremental to the procurement amounts directed in Duke's most recent Carbon Plan and Integrated Resource Plan. Further, Duke states that the "originally proposed options have already received significant customer interest and support[.]" *Id.* at 2.

Duke finally notes that the Stipulation resolves any outstanding issues between the Stipulating Parties with respect to the GSA Choice Program.

DISCUSSION AND CONCLUSIONS

Based upon the foregoing and the entire record herein, the Chair finds good cause to request comments from parties describing their positions on the Stipulation. The record in this proceeding is already robust and the Commission's aim is to resolve these dockets as expediently as possible; accordingly, the Chair urges parties to limit comments to a

clear, concise statement of their position on the Stipulation and to avoid comments repetitious of earlier filings to the greatest extent possible.

IT IS, THEREFORE, ORDERED as follows:

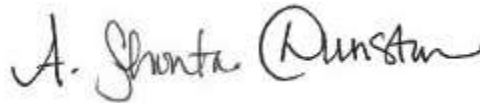
1. That on or before April 26, 2024, parties, excluding the Stipulating Parties, may file concise comments describing their positions on the Stipulation; and

2. That, on or before May 3, 2024, the Stipulating Parties may file concise reply comments responsive to the April 26, 2024 comments.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of April, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "A. Shonta Dunston". The signature is written in a cursive, flowing style.

A. Shonta Dunston, Chief Clerk