

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH  
DOCKET NO. G-9, Sub 728  
DOCKET NO. SP-13243, Sub 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Requests for Declaratory	)	GESS RNG BIOGAS USA, LLC
Rulings of GESS RNG BIOGAS USA, LLC	)	RESPONSE TO
(successor in interest in this matter to GESS	)	ORDER REQUESTING
International North Carolina, INC.)	)	ADDITIONAL INFORMATION
	)	AND COMMENTS

Petitioner GESS RNG Biogas USA, LLC (“GESS RNG” or “Petitioner”) hereby submits this Response to the April 9, 2021 Order Requesting Additional Information and Comments.

This Response is also intended to respond to: (1) the February 17, 2021 letter submitted to the Commission by Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (DEC and DEP, collectively, “Duke Energy”) (the “Duke Energy Letter”), in which Duke Energy asserted that certain statements in GESS’s Second Supplemental and Amended Requests for Declaratory Rulings (accepted for filing with the Commission on February 16, 2021 in Docket No. SP-13243, Sub 0) (the “Second Amended Requests”) were “inaccurate” and sought to “clarify” such statements; and (2) the March 12, 2021 letter submitted to the Commission by Piedmont Natural Gas Company, Inc. (“Piedmont”) in which Piedmont asserted that based on representations in the Duke Energy Letter it appears the current record in this matter is insufficient to support Piedmont’s receipt of Alternative Gas from GESS RNG facilities.

Responding, GESS RNG states as follows:

**1. Commission Request: State the names of all persons and entities (collectively persons) having a membership, equity and/or ownership interest in GESS NC.**

GESS RNG Response:

Mr. Shaun Lee, Mr. Dennis Rafter, and Mrs. Kim Rafter have claimed and/or held ownership interests in GESS NC.

Mr. and Mrs. Rafter have apparently disavowed their respective ownership interests. Mr. Lee does not believe he currently holds sole ownership interest in GESS NC. Mr. Lee is currently acting as the Chief Liquidating Officer, and is so identified with the North Carolina Secretary of State. In that capacity, Mr. Lee states that he is in the process of liquidating remaining assets to pay off creditors and winding down the corporation.

**2. Commission Request: State the names of all persons having a membership, equity and/or ownership interest in GESS RNG.**

GESS RNG Response:

As per its operating agreement, the ownership interests of GESS RNG Biogas USA, LLC are held by Mr. Tony Pinckney, Ms. Olga Lee, Mr. Craig Lasseter, Mr. Cliff Alexander, Mr. Shaun Lee, and Cascadia Capital, LLC.

**3. Commission Request: State the names of all persons having a membership, equity and/or ownership interest in both GESS NC and GESS RNG.**

GESS RNG Response:

Mr. Shaun Lee has previously claimed or held ownership interests in both GESS NC and GESS RNG. Currently, Mr. Lee is acting as Chief Liquidating Officer of GESS NC to wind up that entity. Mr. Lee currently holds ownership interests in GESS RNG. Mr. Lee states that he believes he does not currently hold ownership interest in GESS NC.

**4. Commission Request: State whether GESS NC is currently authorized to conduct business in North Carolina, and the date on which such authorization was obtained.**

GESS RNG Response:

GESS International North Carolina, Inc. is a North Carolina corporation formed on June 13, 2018, and is currently active, as described above in Response 1.

**5. Commission Request: State whether GESS RNG is currently authorized to conduct business in North Carolina, and the date on which such authorization was obtained.**

GESS RNG Response:

GESS RNG Biogas USA, LLC is Delaware limited liability company. On July 21, 2020 GESS RNG Biogas filed an Application for Certificate of Authority with the North Carolina Secretary of State and the Certificate was issued by the Secretary on the

same date. Accordingly, the Secretary of State currently lists GEES RNG Biogas's status as "current-active."

**6. Commission Request: State whether all assets of GESS NC have been transferred to GESS RNG and the date on which such transfer of assets occurred.**

**GEES RNG Response:**

All assets of GESS International North Carolina, Inc. have not been transferred to GESS RNG Biogas USA, LLC.

The assets that have been transferred include, but are not limited to, certain interests in Commission and local government approvals and authorizations, certain intellectual property interests, certain contract interests, and certain membership interests in the following entities: Bladen County Green Energy Biogas Park, LLC, Bladen County Green Energy Biogas Park, LLC, Columbus County Green Energy Biogas Park, LLC, and Robeson County Green Energy Biogas Park, LLC.

Specifically excluded from the transfer were, among other things, membership interests in Union County Green Energy Biogas Park, LLC and Wilson County Green Energy Biogas Park, LLC, as well as any liabilities relating to any breach of contract by Seller GESS NC.

Additionally, since there was no contract between GESS NC and Duke Energy, regardless of the terms of the Asset Purchase Agreement, neither GESS NC nor GESS RNG Biogas is liable for any breach of contract claim alleged by Duke Energy.

The effective date of the transfer of assets from GESS NC to GESS RNG Biogas was January 20, 2021.

**7. Commission Request: State whether GESS RNG has assumed all debts and contract obligations of GESS NC and the date on which such assumption of debts and contract obligations occurred.**

GESS RNG Response:

GESS RNG Biogas USA, LLC has not assumed all debts or liabilities of GESS International North Carolina, Inc. Rather, GESS RNG Biogas USA, LLC has only assumed liabilities associated with certain contracts transferred to GESS RNG Biogas, and even those assumed liabilities relate only to actions or responsibilities first occurring after the effective date of assumption, which was January 20, 2021.

**8. Commission Request: State the reason(s) why GESS RNG is requesting to be substituted for GESS NC as a participant in the Appendix F pilot program.**

GESS RNG Response:

GESS RNG is requesting to be substituted for GESS NC as a participant in the Appendix F pilot program in an effort to carry forward projects previously proposed by GESS NC as well as additional proposed projects of GESS RNG Biogas, as set forth in GESS RNG Biogas's Motion To Amend Order Authorizing Participation in Pilot Program filed with the Commission on February 15, 2021.

Provided however, GESS RNG Biogas is no longer proposing to move forward with the Wilson County Green Energy Biogas Park, Nash County Green Energy Biogas Park, or Union County Green Energy Biogas Park. GESS RNG Biogas does intend to

complete a project in Monroe North Carolina using the original gas interconnection previously approved by the Commission.

GESS RNG Biogas is requesting that the Commission's approval of GESS RNG Biogas relate back to the initial approval of GESS NC in the Order issued by the Commission on March 11, 2019.

GESS RNG Biogas believes that the information obtained by GESS RNG Biogas's participation in the program would still be useful to the Commission and advance the purposed of the program, despite the timing of the initial pilot program in relation to GESS RNG Biogas's request. Further, the Commission may decide to extend or renew the pilot program.

**9. Commission Request: Provide the details of GESS's plans for selling that portion of its renewable gas that is not sold to DEC or DEP, including:**

- (a) The name(s) of the buyers.**
- (b) The facilities to be used in delivering renewable gas to the buyer(s).**
- (c) Whether the buyer(s) will be end users of the renewable gas, or will re-sell it to another entity.**
- (d) The manner in which the price of the renewable gas will be determined.**

**GESS RNG Response:**

GESS RNG Biogas has not yet determined specific details regarding its plans for Gas sales and/or electricity production.

- (a) The names of potential buyers are being assessed and considered and have not yet been determined.

(b) The facilities to be used in delivering renewable gas to buyers have not been specifically determined, but GESS RNG Biogas plans to utilize tanker trucks for delivery, as and if appropriately authorized and in accord with Commission conditions.

(c) Potential buyers may be end users or the gas may be resold to another entity, as and if appropriately authorized and in accord with Commission conditions.

(d) Price of gas and or electricity is planned to be based on market rates, as and if appropriately authorized and in accord with Commission conditions.

**10. Commission Request: State GESS's position in response to the allegations of the Duke utilities in their letter filed herein on February 17, 2021.**

GESS RNG Response:

Response to Duke Energy's Assertions Regarding Communications

As an initial matter, referring to GESS RNG's statements in paragraph 7 the Second Amended Requests that GESS RNG, through counsel, provided a draft of the filing to Duke Energy prior to the filing, the Duke Energy Letter asserts that its "business developers in charge of animal waste compliance goals have not been contacted by GSS RNG regarding this filing." Letter ¶ 5.

In response, GESS RNG states that on January 21, 2021, through counsel, it provided a draft copy of the Second Amended Requests to Deputy General Counsel of Duke Energy who was named on the service list for this docket. Receipt was acknowledged, but no input on the draft filing was provided.

GESS RNG is without knowledge as to Duke Energy's circulation of the draft filing within Duke Energy's organization to officers, staff or counsel, or to outside counsel. The first and only substantive communication from Duke Energy to GESS RNG regarding the draft or final filing (or representations therein) was and is the Duke Letter filed with the Commission.

Subsequent to the submission of the Letter, GESS RNG has made good faith efforts to attempt to communicate with counsel for Duke Energy regarding the Second Amended Requests and the Letter, including via email on February 17, 2021 offering to discuss the matter. To date, no such discussions have occurred.

Additionally, regarding communications, Mr. Shaun Lee states that he contacted the Commission and Piedmont Natural Gas, Inc. in Summer 2020 regarding expansion of the previous Commission approval of the gas connections. Mr. Lee states that he proceeded to work with Piedmont representatives over a period of months, including telephone calls, emails and engineering work that included providing drawings on the site in Bladen County, North Carolina.

#### Response to Duke Energy's Assertions Regarding Contracts

The remainder of Duke Energy's Letter addresses circumstances in which Duke Energy alleges that GESS RNG's predecessor in interest in these proceedings, GESS International NC, Inc., is in breach of contracts with Duke Energy concerning Wilson County and Union County facilities to supply biogas to Duke Energy. Letter ¶¶ 2, 3, 4. On this basis, and assertions that Duke Energy does not intend to contract with GESS RNG to purchase biogas from GESS RNG's proposed facilities, Letter ¶¶ 4, 6, Duke Energy contends that GESS RNG "should be required to bring current their past due



accounts for their Wilson and Union County contracts to deliver biogas to the Duke Utilities which have been in arrears since November 2019.” Letter ¶ 7.

In response, GESS RNG states as follows.

Upon information and belief, no contract exists or has ever existed between Duke Energy (or DEC or DEP) and GESS International North Carolina, Inc. or GESS RNG Biogas, LLC. Duke Energy’s assertions to the contrary are not correct, nor are any assertions that GESS NC or GESS RNG Biogas are liable to Duke Energy for breach of contract otherwise.

Rather, upon information and belief, Green Energy Sustainable Solutions, Inc. (“Green Energy”), a California corporation, entered into contracts with Duke Energy regarding Wilson County Green Energy Biogas Park and Union County Green Energy Biogas Park. Upon information and belief, Mr. Dennis Rafter is the sole owner of Green Energy, and Green Energy holds the ownership interests in the Wilson County Green Energy Biogas Park, Nash County Green Energy Biogas Park, and Union County Green Energy Biogas Park.

Upon information and belief, it is Duke Energy that did not fulfill its contractual obligations to Green Energy, rather than the other way around as alleged by Duke Energy. Upon information and belief, Duke Energy prevented the project from going forward.

Mr. Shaun Lee states that Duke Energy contacted him in November 2019 regarding the Green Energy contract circumstances, and Mr. Lee provided the information received from Duke Energy to Green Energy Sustainable Solutions, Inc. Mr.

Lee states that he is unaware of any further communications between Duke Energy and Green Energy regarding the contracting circumstances or resolution of the same.

GESS RNG Biogas and Mr. Shaun Lee state that they have no affiliation with Green Energy Sustainable Solutions, Inc., Mr. Dennis Rafter, and/or Ms. Laurie Holt.

GESS RNG Biogas and Mr. Shaun Lee state that their strategic partners have sufficient backing and capital to design, build and properly operate the proposed Biogas Plants.

**11. Commission Request: Describe any efforts, or planned efforts, by GESS to resolve the Duke utilities' allegations.**

GESS RNG Response:

Counsel for GESS RNG Biogas contacted counsel for Duke Energy on the day Duke Energy filed its Letter with the Commission - February 17, 2021. To date, counsel for GESS RNG Biogas has not received any response from Duke Energy or its counsel.

GESS RNG Biogas states that it does not believe it has any contractual or other liability to Duke Energy, let alone contractual liability concerning an agreement to which GESS RNG Biogas was not a party. As such, GESS RNG Biogas does not believe it has any obligation to resolve Duke Energy's allegations, which, upon information and belief, are erroneous and not well founded in any event.

**12. Commission Request: State GESS's position in response to Piedmont's position that if DEC and DEP are not GESS's customers, then the current record**

**may not be sufficient to support Piedmont's receipt of renewable gas from GESS's renewable gas facilities.**

GESS RNG Response:

GESS RNG Biogas's position in response to Piedmont's position that if DEC and DEP are not GESS's customers, then the current record may not be sufficient to support Piedmont's receipt of renewable gas from GESS's renewable gas facilities is as follows.

GESS RNG Biogas believes the record in this matter is sufficient for the Commission to grant GESS RNG Biogas's requests for declaratory relief and to allow for GESS RNG Biogas to participate in the Appendix F pilot program.

The original injection amount proposed by GESS NC was 550,000 MMBtus per site per year or approximately 1,500 MMBtus per day. It was anticipated that Duke Energy would only buy 150,000 MMBtus per year. Thus, it appears to GESS RNG Biogas that in the March 11, 2019 Order, the Commission approved of the proposal that included the sale of 400,000 MMBtus to third parties.

Based on this premise, that Duke Energy was buying only a portion of the renewable natural gas proposed to be produced, GESS RNG Biogas will offer the biogas produced to Duke Energy or other third parties at current market retail rate, whether in gas or electricity.

Since neither Duke Energy nor Piedmont Gas was ever going to purchase all of the renewable natural gas proposed to be produced, the changed circumstances regarding Duke Energy's position as to its potential purchase of biogas should not prohibit the Commission from granting the respective requests of GESS RNG Biogas.

Respectfully submitted, this the 10<sup>th</sup> day of May, 2021.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served this day by U.S. Mail, by depositing a copy of the same in a depository of the U.S. Postal Service in a pre-addressed and postage-prepaid envelop and addressed as shown below, or by providing electronic service to those as shown below:

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This the 10<sup>th</sup> day of May, 2021.

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