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May 28, 2019

Ms. Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

***RE: Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, Requesting Approval of Green Source Advantage Program and Rider GSA to Implement G.S. 62-159.2
NCUC DOCKET NO. E-2, Sub 1170 and E-7, Sub 1169***

Dear Ms. Jarvis:

On behalf of the North Carolina Clean Energy Business Alliance ("NCCEBA"), we hereby submit **NCCEBA's Reply Comments** in the above-referenced docket.

If you have any questions or comments regarding this filing, please do not hesitate to call me.

Thank you in advance for your assistance.

Very truly yours,

/s/Karen M. Kemerait

CC: All Parties of Record

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1170

DOCKET NO. E-7, SUB 1169

In the Matter of:
Petition of Duke Energy Progress,
LLC, and Duke Energy Carolinas,
LLC, Requesting Approval of Green
Source Advantage Program and Rider
GSA to Implement G.S. 62-159.2

REPLY COMMENTS OF THE
NORTH CAROLINA CLEAN
ENERGY BUSINESS ALLIANCE

INTRODUCTION

On May 1, 2019, the North Carolina Clean Energy Business Alliance (“NCCEBA”) filed a Motion for Reconsideration regarding the Commission’s February 1, 2019 *Order Modifying and Approving Green Source Advantage Program, Requiring Compliance Filing, and Allowing Comments* (“GSA Order”) with respect to Duke Energy Progress, LLC and Duke Energy Carolinas, LLC’s (collectively, “Duke Energy” or “Duke”) participation in the GSA Program as a GSA Renewable Supplier. On May 6, 2019, the Commission issued an *Order Requesting Comments* which allowed the parties to file comments regarding NCCEBA’s Motion for Reconsideration. Thereafter, on May 13, 2019, the Commission issued an *Order Granting Motion for Extension of Time* establishing an initial comment deadline of May 20, 2019 and allowing NCCEBA to file reply comments by May 27, 2019.¹

¹ NCCEBA subsequently received confirmation from the Commission that because the Commission will be closed for the Memorial Day holiday on Monday, May 27, 2019, NCCEBA may file its Reply Comments by Tuesday, May 28, 2019.

On May 20, 2019, Duke Energy, the North Carolina Sustainable Energy Association (“NCSEA”), and the Southern Alliance for Clean Energy (“SACE”) filed comments on NCCEBA’s Motion for Reconsideration. No party responding to NCCEBA’s Motion for Reconsideration, including Duke, has opposed NCCEBA’s request that any Duke-owned GSA Facility receive market-based post-GSA term cost recovery, rather than cost-of-service based recovery.

REPLY COMMENTS

1. Response to Duke’s Comments

In response to NCCEBA’s Motion for Reconsideration, Duke does not oppose NCCEBA’s request that the Commission permit any Duke-owned GSA Facility to receive market-based post-term cost recovery rather than cost-of-service based recovery. Duke affirmatively states that “assurance by the Commission of the right to market-based revenues for Duke-owned facilities at the conclusion of the GSA Term would be a reasonable outcome in the context of the GSA Program.”² As Duke indicates, this determination is the “primary relief sought” by NCCEBA in its Motion for Reconsideration. Importantly, no party in this proceeding has opposed NCCEBA’s request.

With respect to post-term market-based cost recovery, Duke notes that, unlike third-party suppliers, Duke does not have the ability to sell post-term output from a Duke-owned facility under PURPA, which “further demonstrates that Commission confirmation of the right to post-term market-based revenue for Duke-owned facilities is

² *Duke Comments*, p. 3.

appropriate at this time.”³ Consistent with a transition towards broader competitive procurement of generation resources as envisioned by House Bill 589 (“H.B. 589”), NCCEBA does not object to such recovery by Duke in the GSA context at rates equivalent to those available to third-party suppliers. Also, the Commission’s rules support revenue recovery on a market-basis that does not exceed Duke’s avoided cost rate, which is consistent with market opportunities available to third-party suppliers. Specifically, Commission Rule R8-71 addresses market-based post-term recovery for Duke in the context of CPRE. Commission Rule R8-71 requires that if Duke is permitted to receive market-based revenue during the term of the applicable agreement, Duke “shall similarly be permitted to continue to receive authorized revenue based on an updated market based mechanism” which cannot exceed the avoided cost.⁴ It would be appropriate for the Commission to apply this principle in the context of GSA as well.

Next, although Duke concludes that market-based post-term cost recovery would be an appropriate outcome in this proceeding, Duke argues that if the Commission instead chooses to approve cost-of-service-based post-term recovery for Duke-owned GSA Facilities “it does not follow that Duke should be prohibited from participation in the GSA Program” as recommended by NCCEBA.⁵ Duke argues that the effect of NCCEBA’s recommendation would be to “reduce the pool of potential suppliers available to meet the needs of potential GSA Customers.”⁶

³ *Duke Comments*, p. 3.

⁴ Commission Rule R8-71(l)(4).

⁵ *Duke Comments*, p. 3.

⁶ *Duke Comments*, p. 4.

While NCCEBA agrees that it is desirable to have a large pool of potential suppliers, that goal cannot be grounds for creating a program structure that gives one supplier a significant and unfair competitive advantage over others. In addition, although Duke depicts its removal from the “pool of potential suppliers” as a significant reduction, the reality is that removing Duke as potential supplier would result in only one fewer potential GSA Renewable Supplier. GSA Customers would still have access to a large group of potential third-party GSA Renewable Suppliers in North Carolina and South Carolina that are eligible to participate in the program. Duke’s implicit suggestion--that it would be able to offer more favorable GSA pricing or terms than other third-party suppliers and that customers would be at a disadvantage if Duke could not participate--supports the concerns raised in NCCEBA’s Motion for Reconsideration and in the comments of NCSEA and SACE (*i.e.*, that Duke’s position as the incumbent monopoly utility could inherently advantage Duke as a GSA Renewable Supplier relative to third-party suppliers). For example, Duke fails to address NCCEBA’s concerns regarding Duke’s significant competitive advantage in participating as a GSA Renewable Supplier without being required to enter into a PPA with itself. By Duke not having to enter into a PPA with itself, Duke will avoid the risk of termination by itself for events of default, the risk of damages for failure to perform, and substantial performance security requirements, all of which impose significant costs and risks on third-party developers.

The General Assembly clearly intended H.B. 589 to create a more competitive environment through which multiple suppliers may compete to provide renewable energy

resources to customers within Duke's service territory.⁷ This intent is reinforced by a competitive procurement process through which all suppliers can compete on equal footing. NCCEBA does not object in principle to Duke's involvement as a market participant in these H.B. 589 solicitations, but Duke should not be allowed to leverage competitive advantages it enjoys as the incumbent utility to limit the advancement of fair and competitive resource procurements in the state. Indeed, greater opportunities for third-party supplier participation will help to decrease project costs over time as third-party suppliers gain greater experience and efficiencies acting as market participants in these H.B. 589 competitive programs. Under a competitive procurement regime, these efficiencies will directly result in lower prices passed along to customers. Duke's application of a substantial competitive advantage would stifle this process and frustrate a key purpose of H.B. 589.

2. Response to Comments of NCSEA and SACE

NCSEA and SACE both filed comments supportive of NCCEBA's Motion for Reconsideration. NCSEA and SACE agree with NCCEBA that cost-of-service based recovery for Duke-owned facilities is not contemplated by statute and is unfair to other developers.⁸ NCSEA states that the Commission's determination that Duke can recover its costs for its GSA Facilities through cost-of-service recovery is contrary to the legislative intent of the North Carolina General Assembly.⁹ NCCEBA agrees that the GSA statute does not indicate that Duke should be given the opportunity to participate as

⁷ The Commission acknowledged this in its February 1, 2019 GSA Order, stating "House Bill 589, including the GSA Statute, display an intent on the part of the General Assembly to introduce an element of competitive pricing into the procurement of renewable energy." GSA Order at 45, n. 21.

⁸ *NCSEA Comments*, p. 3; *SACE Comments*, p. 2.

⁹ *NCSEA Comments*, pp. 4-5.

a GSA Renewable Supplier at a competitive advantage over third-party GSA Renewable Suppliers, and that the Commission should not support this result. NCCEBA also agrees with NCSEA that allowing Duke to rate base the GSA Facility after the term of the GSA Service Agreement expires would be contrary to the Commission's recognition that "House Bill 589, including the GSA Statute, display an intent on the part of the General Assembly to introduce an element of competitive pricing into the procurement of renewable energy."¹⁰

SACE and NCSEA express concern that Duke's competitive advantage would further increase if the duration of GSA Service Agreement between Duke and the GSA Customer was on the low end of the available contract durations under the GSA Program, including terms of two or five years.¹¹ NCSEA notes that this would guarantee Duke's investments are returned following the short-term GSA Service Agreement through retail rates.¹² NCSEA also states that "[t]he financial risk between a non-utility developer and Duke in the GSA program as outlined in the GSA Order is disparate and anticompetitive."¹³ SACE states that "[b]ecause a GSA contract term can be as short as two years, this means that Duke Energy could rate-base a GSA project for the overwhelming majority of its useful life", and that "Duke Energy could offer contracts at below-market rates—or potentially even below cost—for short terms" before recovering the remainder of the asset through base rates.¹⁴

¹⁰ NCSEA Comments, p. 5 (citing the GSA Order, p. 45, n. 21).

¹¹ NCSEA Comments, p. 5; SACE Comments, p. 2.

¹² *Id.*

¹³ *Id.*

¹⁴ SACE Comments, p. 2.

NCCEBA agrees with SACE and NCSEA that the anti-competitive implications of Duke being permitted to rate base self-owned GSA Facilities after the term of the GSA Service Agreement would be exacerbated if Duke were to enter into shorter-term GSA Service Agreements. This concern further supports NCCEBA's request that if Duke is permitted it participate as a GSA Renewable Supplier, it must be limited to market-based post-term revenue recovery.

CONCLUSION

For the reasons discussed herein, NCCEBA maintains its request made in the May 1, 2019 Motion for Reconsideration that the Commission reconsider and modify its February 1, 2019 GSA Order (1) to provide that if Duke is permitted to participate in the GSA Program as a GSA Renewable Supplier, Duke be permitted to receive market-based recovery on any Duke GSA Facility after the expiration of the GSA Service Agreement, or (2) if the Commission is unwilling to provide for such market-based cost recovery, Duke should not be permitted to participate in the GSA Program as a GSA Renewable Supplier.

Respectfully submitted, this the 28th day of May 2019.

FOX ROTHSCHILD LLP

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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Reply Comments of the North Carolina Clean Energy Business Alliance by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission to all parties of record.

Respectfully submitted, this the 28th day of May, 2019.

FOX ROTHSCHILD LLP

BY: Karen Kemerait
Karen M. Kemerait
Attorneys for: North Carolina Clean
Energy Business Alliance

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May 28 2019