STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

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

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 CLEAN ENERGY BUYERS ASSOCIATION**

NOW COMES the Clean Energy Buyers Association ("CEBA") by and through their legal counsel, and respectfully submits the following Reply Comments in accordance with North Carolina Utilities Commission's ("Commission") *Order Requesting Comments* entered in Docket No. E-7, Sub 1289, and Docket No. E-2, Sub 1314 on February 9, 2023, its *Order Granting Extension* entered on March 28, 2023, its *Order Granting Extension* entered on May 12, 2023, and its *Order Granting Second Extension* entered on June 14, 2023, in the above referenced dockets.

I. <u>INTRODUCTION</u>

CEBA appreciates the Commission's Orders in the above referenced Dockets allowing for extensions of time to allow Duke Energy Progress, LLC ("DEP") and Duke Energy Carolinas, LLC ("DEC"; collectively with DEP, "Duke" or the "Companies") to work with the North Carolina Public Staff ("Public Staff") and customer-intervenors to engage in good faith discussions to attempt to find solutions to issues raised in Duke's Application and in the various Initial Comments by intervenors that could make the Green Source Advantage Choice ("GSAC" or "the program") program workable for more customers. CEBA believes the program as filed can lead to participation by some customers and that it is an improvement from some of the previous commercial and industrial customer program offerings from Duke and reiterates its appreciation for that. CEBA also notes that thoughtful issues have been raised by parties, particularly issues concerning "additionality" or "regulatory surplus"[1], which could impact the ability for participating customers to obtain certification for the attributes they purchase from industry-recognized third-party accounting entities[2]. It is for those reasons that CEBA believes further consideration and dialogue amongst interested parties is warranted to ensure that a participating customer receives the full Clean Energy Environmental Attributes ("CEEAs") for which they pay.

Given the continued dialogue around a fundamental issue necessary for a robust customer program and, upon a review of S.L. 2021-165 ("HB 951") that there is no statutory deadline imposed for approval of the program, CEBA requests that this Commission allow for the filing of Sur-reply Comments and supports any other relief requested by CIGFUR II and III to further respond to anticipated Reply Comments and to work with parties to continue to attempt to find a solution rather than approve now an application that could be under-subscribed due either to the lack of third-party certification of the CEEAs or because the program is cost-prohibitive if modified in a manner as suggested by some intervenors. CEBA believes all parties share the common goal of achieving a program with robust participation. CEBA makes this request in good faith and not to cause unnecessary delay.

In the absence of granting this request, and in support of these Reply Comments, CEBA respectfully shows the Commission the following:

II. <u>REPLY COMMENTS</u>

[1] *See generally* Initial Comments of the Public Staff at pp. 10, 16, 17, 20; *also see generally* Joint Initial Comments of Southern Alliance for Clean Energy, North Carolina Sustainable Energy Association, Carolinas Clean Energy Business Association.

[2] Initial Comments of the Public Staff at p. 10.

A. CEBA Supports the Recommendation Made by CUCA to Remove the Project Location by Service Territory Restriction, or in the Alternative, Recommends the Commission Allow Projects Sited in Either Service Territory be Allowed to Partner with Customers Located in Either Service Territory Which is Consistent with Public Statements Made by Duke About the Companies Imminent Intention to Seek Regulatory Approval of DEC and DEP Consolidation.

CEBA supports the recommendation made by The Carolinas Utility Customer Association, Inc. ("CUCA") to "expand[ ] the geographic footprint of eligible projects (i.e., beyond the immediate serving utility's service territory."[3] This is consistent with CEBA's position in its Initial Comments. Customers in the DEP and DEC service territories should not be restricted to projects located within the same service territory in which they have facilities. To the extent this modification triggers waiver of affiliate transactions to be approved by this Commission, CEBA pre-emptively offers its support for such waiver so long as the HB 951 requirement for protection of non-participating customers is met.

In the alternative, CEBA recommends that customers be granted certainty that is consistent with the public position of Duke that it will ask this Commission in 2023 to allow it to combine Duke Energy Carolinas LLC and Duke Energy Progress LLC into a single balancing authority.[4] Specifically, on February 23, 2022, Duke informed a group of stakeholders that it plans to seek regulatory approval of a merger of DEC and DEP.[5] A Duke executive told nearly 400 attendees that the Companies "think that (a consolidation of the DEC and DEP service territories) can provide good benefit for customers" and that "**this** is the appropriate time (to seek regulatory approval)".[6] In a written statement provided to media outlets on February 24, 2022, Duke Energy stated that "operational benefits of a larger balancing area may include lower reserves, less solar curtailment, and improved reliability, producing measurable benefits to customers on an annual basis" and that the companies believe that a DEC and DEP combination would be "a low-cost

---

[3] Initial Comments of CUCA at p. 5.
[4] https://www.investorvillage.com/smbd.asp?mb=4200&mn=250&pt=msg&mid=22991890 (last accessed June 22, 2023); https://www.bizjournals.com/charlotte/news/2022/02/23/duke-energy-plans-to-combine-operations.html (last accessed June 22, 2023).
[5] https://www.bizjournals.com/charlotte/news/2022/02/23/duke-energy-plans-to-combine-operations.html (last accessed June 22, 2023).
[6] *Id.* (Emphasis added).

strategy that achieves lower CO2 emissions through reliable and efficient operations of future variable energy resources with legacy generation".[7]

Given the Companies' stated beliefs as to the benefits to customers of a larger geographic footprint specific to the integration of the very technology at the heart of this customer program, it is illogical for the company to not immediately seize those benefits for customers in their application. Further, if they do intend to seek approval from this Commission this year for consolidation (and it is approved) it would not promote judicial economy, be a prudent use of the resources of this Commission or those of intervenors, and would lead to increased expenses the Companies will likely seek to recover from customers in rates if Duke has a tariff approved right now limiting the geographic location of projects by service territory that it will nearly immediately have to file to amend to comply with an approved consolidation. CEBA recommends that CUCA's recommendation to remove the geographic footprint limitation as to project location from the GSAC program and tariffs be adopted by this Commission.

B. CEBA Continues to Support Expanding Bill Credit Term Options. CEBA Recommends 10-, 20-, 25-, and 30-Year Options and A Program Expansion Mechanism to Enable Flexibility Necessary for Broader Customer Participation and Avoid Unnecessary Transaction Costs and Delays in Procurement.

CEBA is joined by other intervenors in support of our initial recommendation to expand bill credit term options beyond 10 years.[8] CEBA, CIGFUR and CUCA all note that more flexibility is necessary to enable customer participation, and thus support success of the proposed program overall. CEBA supports CIGFUR's recommendation for expanded, flexible bill credit term options to include 25- and 30-year bill credit term options (in addition to the 20-year term CEBA proposed in our Initial Comments).[9] CEBA further supports CIGFUR's recommendation to provide a program expansion mechanism and clearly detail methodology by which capacity is allocated in

[7] https://www.investorvillage.com/smbd.asp?mb=4200&mn=250&pt=msg&mid=22991890 (last accessed June 22, 2023).
[8] *See generally* Initial Comments of CIGFUR II & III; *also see generally* Initial Comments of CUCA.
[9] CIGFUR II & III Initial Comments at p. 5.

case of oversubscription.[10] This would enable more customers to participate, in the event that annual program capacity is met by 1-2 large customers.

C. CEBA Supports the Recommendation of Google to Require Duke to Work with External Stakeholders to Implement the CEEA Hourly Tracking and Accounting System.

CEBA agrees with and supports Google's recommendation, in its Initial Comments, that Duke be required to work with external stakeholders, or pre-existing solutions, to reduce costs and standardize implementation of the CEEA hourly tracking and accounting system, where possible.[11] CEBA believes that the recommendation from Google does not preclude its own recommendation in Initial Comments requesting that the Commission order a formal stakeholder process with a report on the program development to the Commission no later than 90 days from the Commission's approval of the tariffs. Ultimately, implementing both recommendations will ensure that the accumulated knowledge from ongoing work in this space is adopted as appropriate and that the resulting cost-efficiencies accrue to North Carolina ratepayers.

D. CEBA Recommends that the Commission Modify the Application to Enable Customers to Transfer CEEA Credits to Affiliated Entities, Such as Parent and/or Holding Companies of the Subsidiaries, With the Assurance by the Participating Customer that the CEEA Credits Will be Retired by and for the Benefit of Either the Customer or the Affiliate Company.

The GSAC Application currently provides two options for participating customers regarding CEEA credits:[12]

> Option 1: Duke retires CEEA credit on behalf of Customer A; or
> Option 2: Duke transfers the CEEA credit to Customer A and charges an additional administrative fee. The customer must then retire the credit and cannot transfer the credit to another legal entity, such as a Holding/Parent/Affiliated Company.[13]

[10] Id. at p. 5.
[11] Initial Comments of Google at p. 16.
[12] Initial Application for Approval of GSAC.
[13] Initial Application for Approval of GSAC, Appendix B at p. 5.

CEBA recommends that Option 2 be modified to enable participating customers to transfer CEEA credits to affiliated entities, with the assurance by the customer that the credit would be retired by and on behalf of the affiliate.

Enhancing the program offering with this modification would provide a more workable and attractive program for customers that are franchisees of a larger corporation, and more generally for industrial and commercial business customers that operate within a larger portfolio of companies that are separate, yet affiliated legal entities.

CEBA believes that this small modification is both reasonable and justified and would support and enable increased participation in the program by a broader range of industrial and commercial customers.

III. <u>CONCLUSION</u>

CEBA appreciates the opportunity to file these reply comments and to make the request for further opportunities to engage on these dockets which are of great importance to its customer members.

WHEREFORE, CEBA respectfully requests that the Commission consider these reply comments and grant the requested opportunity for further engagement to achieve a program that achieves robust participation.

Respectfully submitted this 23rd day of June, 2023.

NELSON MULLINS RILEY & SCARBOROUGH LLP

*/s/ Joseph W. Eason*___________________
Joseph W. Eason, Esq.
N.C. State Bar No. 7699
joe.eason@nelsonmullins.com
301 Hillsborough Street, Suite 1400
Raleigh, North Carolina 27603
Phone: (919) 329-3800
Fax: (919) 329-3799

Weston Adams, Esq.
N.C. State Bar No. 18659
weston.adams@nelsonmullins.com
1320 Main Street
Meridian 17th Floor
Columbia, SC 29201
Phone: (803) 799-2000
Fax: (803) 256-7500

Jamey H. Goldin, Esq.*
Nelson Mullins Riley & Scarborough LLP
Liberty Center, Suite 600
151 Meeting Street
Charleston, SC 29401
jamey.goldin@nelsonmullins.com
Phone: (843) 534-4116
Fax: (843)722-8700
*Motion for Admission *Pro Hac Vice* Pending

Counsel for Clean Energy Buyers Association

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Clean Energy Buyers Association filed in Docket Nos. E-7, Sub 1289 and E-2, Sub 1314 was served electronically or via U.S. mail, first-class postage prepaid, upon all parties of record.

This the 23rd day of June, 2023.

/s/ Joseph W. Eason
Joseph W. Eason

Counsel for Clean Energy Buyers Association