BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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,	)	**COMMENTS OF SACE**
LLC, Requesting Approval of Green	)	**ON COMPLIANCE FILING**
Source Advantage Program and Rider	)	
GSA to Implement G.S. 62-159.2	)	

Pursuant to the North Carolina Utilities Commission's ("Commission") *Order Establishing Proceeding to Review Proposed Green Source Rider Advantage Program and Rider GSA*; *Order Modifying and Approving Green Source Advantage Program, Requiring Compliance Filing, and Allowing Comments* ("February 1 Order"); and *Order Granting Extensions of Time* in the above-referenced dockets, the Southern Alliance for Clean Energy ("SACE") respectfully submits the following comments on the compliance filing for the Green Source Advantage Program and Rider GSA tariffs ("GSA Program" or the "Program") submitted by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, the "Companies" or "Duke"), titled *Duke Energy Carolinas, LLC's And Duke Energy Progress, LLC's Green Source Advantage Program Compliance Filing* (the "Compliance Filing").

SACE appreciates the work that Duke has put into crafting a GSA Program to comply with N.C. General Statute § 62-159.2 and the Commission's February 1 Order. However, a few features of the proposed GSA Program as outlined in the Compliance Filing remain unclear or at odds with those mandates, as discussed below. Because any GSA Program capacity that remains unreserved by December 31, 2022 will be re-

allocated to the Competitive Procurement of Renewable Energy ("CPRE") program,[1] SACE recommends that necessary revisions to the GSA Program, including any related stakeholder meetings, take place as quickly as possible to provide eligible customers an adequate opportunity for GSA Program participation.

Directed Procurement of GSA Facilities

In its February 1 Order, the Commission directed Duke to revise the structure of the self-supply option so that it would "empower the eligible customer to negotiate a price with the renewable energy facility the customer has selected, which sets the GSA Product Charge as part of the three-party agreement for participation in the GSA Program, consistent with the basic structure proposed in the Walmart Settlement." February 1 Order at 53.

In its Compliance Filing, Duke states that under the GSA Service Agreement, "the GSA Customer would be responsible for paying the GSA Product Charge (equal to the Negotiated Price) and would receive the Bill Credit by way of assignment by the GSA Facility Owner." Compliance Filing at 3 (i.e., page 5 of the "Part 1" combined PDF in Duke's filing). According to the draft GSA Service Agreement, the GSA Product Charge will be "the price corresponding to the relevant portion of the Delivery Period as set forth in Exhibit 'B' attached hereto ('GSA Product Charge'), for "the Subscribed Percentage of the MWhs generated by the Supply Resource and delivered to the [Duke]." Compliance Filing, Ex. A, GSA Service Agreement at 2 (Part 1 PDF at 26). However, the schedule of

[1] G.S. § 62-159.2(d)("The program shall be offered by the electric public utilities subject to this section for a period of five years or until December 31, 2022, whichever is later….If any portion of the 600 megawatts (MW) of renewable energy capacity provided for in this section is not awarded prior to the expiration of the program, it shall be reallocated to and included in a competitive procurement in accordance with G.S. 62-110.8.").

the GSA Product Charge is blank and "subject to Duke legal and management approval." Compliance Filing, Ex. A, Ex. B (Part 1 PDF at 36).

As discussed below, the GSA Product Charge must be based on the PPA contract price negotiated by the GSA customer and renewable supplier. The Commission should require Duke to clarify its filing accordingly.

Application Process and GSA Service Agreement

In its February 1 Order, the Commission approved Duke's proposed contract term options of two-, five-, ten-, fifteen-, and twenty-years for the Bill Credit option that is based on the Commission-approved avoided cost rate methodology. February 1 Order at 55. The Commission also determined that the bill credit option based on hourly, day-ahead production data, for a term of *any* number of years up to the 20-year limit provided in the GSA Statute, as proposed in the Walmart Settlement, is "appropriate and should be made generally available as an alternative bill credit option." *Id.*

In the proposed GSA riders submitted with its Compliance Filing, Duke states that a potential GSA customer's "application shall also identify the requested contract term for the Customer's enrollment in the Program and may be two, five, ten, fifteen or twenty years as well as the Bill Credit option the Customer is choosing." Compliance Filing, Ex. F, Rider GSA-1 at 1 (Part 3 PDF at 65) (for DEP) and Ex. H, Rider GSA at 1 (Part 3 PDF at 73) (for DEC). To comply with the Commission's order, the riders should be revised to reflect the availability of additional flexible terms of *any* number of years up to 20 years for GSA customers that choose the bill credit option based on hourly, day-ahead production cost data.

GSA PPA Rates and Terms

In its February 1 Order, the Commission rejected Duke's proposal to establish the contract price "based on the capacity-weighted average of all proposals selected through a CPRE RFP Solicitation or, for shorter-term agreements, on the lesser of the utility's avoided cost rate or the price negotiated between the eligible customer and the renewable energy facility owner" because "the eligible customer shall be allowed to negotiate with the renewable energy suppliers regarding the price terms."[2] February 1 Order at 56. The Commission explained that "the contract price is to be established based on the negotiations between the eligible customer and the renewable energy facility owner, and that the eligible customer will be required to pay Duke that contract price, which shall then be passed on to the owner of the GSA renewable energy facility." *Id.* Accordingly, it determined "that the GSA PPA contract price shall be the *rate negotiated between the eligible customer and the owner of the GSA renewable energy facility (in $/MWh)* multiplied by the energy actually produced by the facility (in MWh), to derive an amount expressed in dollars. This pricing mechanism shall apply for all contract term lengths, and shall establish the GSA Product Charge, consistent with that construct proposed under the Walmart Settlement." *Id.* (emphasis added). The Commission further clarified, "the GSA Product Charge shall be a monthly charge to the participating customer *that is equal to the price the customer would have paid directly to the renewable energy supplier under a negotiated contract for the sale of the electric output of the facility*, with the only difference being that Duke shall collect the GSA Product Charge and remit the same amount to the renewable energy supplier. February 1 Order at 58 (emphasis added).

[2] "Eligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms." N.C. Gen. Stat. § 62-159.2(b).

Despite this clear direction from the Commission, Duke appears to require in its Compliance Filing that the GSA customer and the renewable supplier set a contract price that equals the bill credit. At a minimum, the provisions in the Compliance Filing and related attachments create ambiguity and require further clarification and revision to ensure compliance with the Commission's Order allowing a renewable energy supplier and customer to negotiate their contract price.

In its Compliance Filing, Duke states that "the contract price specified in the PPA is the relevant Bill Credit methodology selected by the applicable GSA Customer." Compliance Filing at 7. Similarly, in its proposed GSA Service Agreement, Duke states that "The Bill Credit shall be equal to the contract price under the PPA *which shall, as elected by the GSA Customer, be either* (1) a 2- or 5-year avoided cost value calculated using the methodology approved pursuant to N.C. Gen. Stat. § 62-156(c) (provided however, for contract terms in excess of 5 years, the rate calculation shall be refreshed at five-year intervals until the end of the contract term) or hourly marginal rate as specified in the applicable GSA tariff." Compliance Filing, Ex. A, GSA Service Agreement at 2 n.1 (Part 1 PDF at 26) (emphasis added). Finally, in its proposed GSA riders, Duke states, "The GSA PPA contract price shall be equal to the applicable Bill Credit selected by the Customer." Compliance Filing, Ex. F, Rider GSA-1 at 2 (Part 3 PDF at 66) (for DEP) and Ex. H, Rider GSA at 2 (Part 3 PDF at 74) (for DEC).

This is a problem. First, if the contract price between a GSA customer and a renewable supplier must be equal to the bill credit that the GSA customer receives, then a GSA customer cannot actually negotiate a PPA price with a renewable supplier, and the Compliance Filing does not comply with the Commission's February 1 Order. Under

Duke's proposed language, the GSA customer and renewable supplier would have only two options for a PPA contract price, namely, the two types of Bill Credit, either based on the Commission-approved avoided cost rate methodology, or based on hourly, day-ahead production cost data. Neither of these two methodologies constitutes a "rate negotiated between the eligible customer and the owner of the GSA renewable energy facility (in $/MWh)." February 1 Order at 56. Nor do these methodologies represent "the price the customer would have paid directly to the renewable energy supplier under a negotiated contract for the sale of the electric output of the facility," February 1 Order at 58; there is no reason that the two parties acting independently of Duke would negotiate a PPA contract price based on Duke's costs.

Second, Duke's proposal prevents a GSA customer from saving money by negotiating a PPA price that is lower than Duke's avoided cost. According to Duke's proposed GSA Service Agreement, payments will flow as follows: (1) Duke will assign all of its interest in the GSA Product Charge that it actually receives from the GSA customer to the renewable supplier, for however much electricity the renewable supplier delivers over to Duke during each billing period; (2) the renewable supplier will assign all of its interest in the payments that it receives from Duke over to the GSA customer, and Duke will provide those payments to the GSA customer in the form of a bill credit. Compliance Filing, Ex. A, GSA Service Agreement at 2 (Part 1 PDF at 26). In other words, under this "pass-through" system, the GSA customer pays Duke for the electricity that the renewable supplier generated, which Duke passes on to the renewable supplier; and Duke takes the money that it would have paid the renewable supplier for the electricity that it generated and instead passes it to the GSA customer as a bill credit.

This pass-through system makes it essential to track the payments flowing in each direction carefully. Under the Commission's February 1 Order, the payment flowing from the GSA customer through Duke to the renewable supplier, i.e., the GSA Product Charge, must be the contract price negotiated between those parties. *See* February 1 Order at 56. And the payment flowing from Duke past the renewable supplier and to the GSA customer, i.e., the Bill Credit,[3] must be either the Commission-approved avoided cost rate methodology, or hourly, day-ahead production cost data. February 1 Order at 46. In other words, under the system that the Commission directed Duke to establish, the GSA customer pays for the electricity that the renewable supplier generates at the negotiated contract price, and receives a bill credit for the same amount of electricity at Duke's avoided cost rate.

Under this system, the GSA customer saves money so long as it negotiated a contract price (plus transaction costs and the administrative charge) lower than Duke's avoided cost. Renewable energy providers that can profitably develop a facility and sell power at less than Duke's avoided-cost rate benefit by getting business from GSA customers. At the same time, Duke, and Duke's other customers, are held harmless precisely because they are paying no more than Duke's *avoided cost* for the power generated by the renewable supplier.

The language as currently proposed in the Compliance Filing would appear to make these benefits impossible, undermining one of the key purposes of negotiating a PPA. Duke's proposed language narrowly limits the options for payments flowing from the GSA customer through Duke to the renewable supplier, i.e., the GSA Product Charge, rather than allowing it to be the contract price negotiated between the GSA customer and

[3] Under the statute, the bill credit may not exceed Duke's avoided cost. N.C. Gen. Stat. § 62-159.2(e).

the renewable supplier. The payment flowing from Duke past the renewable supplier and to the GSA customer, i.e., the Bill Credit, is the same as above; it must be either the Commission-approved avoided cost rate methodology, or hourly, day-ahead production data. In other words, Duke's proposed language matches the amount the renewable supplier is paid and the bill credit at Duke's avoided cost. But this is not what the Commission ordered.

Under Duke's proposed language, a potential GSA customer would not save money by entering the program regardless of how cheap a contract it could negotiate, because its contract price by definition must equal its bill credit, and it will also need to pay administrative charges and the general transaction costs associate with entering the program. Thus, the GSA Program will be cost-additive for potential GSA customers and this will likely lead to under-subscription. Any renewable supplier that did manage to secure a contract would likely obtain a windfall, assuming it could supply power at less than Duke's avoided-cost rate (and therefore would have agreed to a PPA at a lower rate), but because few GSA customers are likely to enroll few renewable suppliers will get contracts. Put differently, Duke's system artificially inflates the PPA price between GSA customers and renewable energy providers that can develop facilities to sell more cheaply than Duke's avoided cost rate. Duke and its other customers would still be held harmless because they would be paying no more than Duke's avoided cost for the power generated by the renewable supplier.

Finally, Duke's proposed language would impermissibly convert the GSA Program into a cost-additive REC program. As discussed above, participation in the program as proposed by Duke would cost more. And as the Commission has directed,

GSA customers will receive "all RECs earned by the facility." February 1 Order at 57. The Commission has previously found that "the fundamental economics of the transaction under Duke's proposed self-supply option is a negotiation for the sale of RECs, through a separate contractual arrangement between the participating customer and the GSA renewable energy facility." February 1 Order at 57. As the Commission explained, the essential problem with the self-supply option as Duke originally proposed it was the GSA customer's inability negotiate "regarding the price for renewable energy and capacity," and it directed Duke to revise the program accordingly. *Id.* at 53. Under the program Duke proposes in its compliance filing, the transaction fundamentally involves paying more and receiving RECs in return.

The Commission should require Duke to comply with its conclusion in its February 1 Order that GSA customers must be able to negotiate with renewable suppliers regarding the price for renewable energy and capacity and require Duke to amend or clarify its proposed GSA Program accordingly.

Interconnection Application Status and Payment of Costs

In its February 1 Order, the Commission explained that it favored the "traditional approach" in which each GSA customer or facility would bear its own interconnection costs, and that there was no "guidance to market participants about where to locate their proposed renewable energy facilities to minimize grid upgrade costs." February 1 Order at 62. It noted that Duke revised the design of its proposed GSA Program to eliminate the requirement to complete a system impact study, in accordance with Public Staff's comments, leaving it unclear "when the GSA Program customer and its selected renewable energy facility will be informed about these costs." *Id.* Accordingly, the

Commission provided the guidance that "Duke must provide the eligible customer with information regarding the interconnection costs and/or grid upgrade costs fairly attributed to accommodating the renewable energy facility selected by the GSA customer relatively early in the GSA Program application process." *Id.* The Commission stated that it would "require Duke to address these issues with more specificity through its compliance filing." *Id.*

In its Compliance Filing, however, Duke states that it will *not* provide this information relatively early in the GSA Program application process. Compliance Filing at 11 n.14. Instead, it will provide each GSA *Facility Owner* "'information regarding the interconnection costs and/or grid upgrades costs' in accordance with the serial processing requirements applicable under the relevant procedures" and thus each GSA *customer* will not necessarily receive the information relatively early in the process. In other words, Duke will require each GSA Facility Owner to follow the standard interconnection procedures and refuses to provide any "unique interconnection-related arrangements . . . in connection with the GSA Program." *Id.* at 11. Duke states that each renewable supplier will "presumably take into account the cost of Interconnection Facilities and any transmission and distribution Network Upgrades in agreeing upon the Negotiated Price with a GSA Customer," although Duke does not say how or when the supplier will obtain this information. *Id.* Thus, Duke simply dismisses the Commission's accurate concern that it will be more difficult for renewable suppliers to develop accurate contract prices—and thus to develop facilities—and fails to provide any reason that interconnection and grid upgrade information could not be made available sooner.

At the same time, Duke newly requests that the Commission require any potential GSA renewable supplier to conduct a full system impact study as an eligibility condition "to ensure that any potential GSA Facility has made sufficient progress in the interconnection process to achieve commercial operation in a timely manner." *Id.* at 12. Duke asserts that otherwise, "there would be a risk that speculative projects early in the development process could consume available GSA Program capacity even though substantial and perhaps insurmountable interconnection cost hurdles exist to successful project completion." *Id.* Duke previously withdrew this request in response to Public Staff's concern that it resulted in an unequal "playing field" between "self-supply" and "standard offer" options. *Id.* Duke appears to assert that this concern is no longer relevant now that the "standard offer" option has been eliminated. *Id.*

This is incorrect. In its *Initial Comments of the Public Staff*, the Public Staff pointed out that Duke's use of the CPRE program to identify and select projects for the "standard offer" would make it difficult to ensure that non-participating customers were held neutral because the network upgrade costs associated with the CPRE Program—and thus with standard-offer projects—would not be assigned to those projects, whereas the costs associated with self-supply projects would be. *Initial Comments of the Public Staff* at 8-9. But this was not Public Staff's only concern. Public Staff also asserted that requiring GSA Program project proponents to have completed system impact studies prior to eligibility would bias Duke's procurement in favor not just of the standard offer, but in favor of the *CPRE program*, and argued that it is "critical to ensure that eligibility for the programs are not biased in favor of one program over another." *Id.* at 9. It is still the case that requiring potential renewable suppliers participating in the GSA Program to

complete system impact studies prior to program eligibility will further disfavor GSA Program facilities relative to CPRE Program facilities.

The Commission should require Duke to submit a proposal to make information regarding the interconnection costs and/or grid upgrade costs for a potential GSA facility available early in the process to both renewable suppliers and program customers, and should reject Duke's request to require each potential renewable supplier to complete a full system impact study prior to program eligibility.

CONCLUSION

The issues discussed above will affect the overall success of the GSA Program. SACE respectfully submits these Comments for the Commission's consideration.

Respectfully submitted this 8th day of April, 2019.

s/Nick Jimenez
Nicholas R.G. Jimenez
N.C. Bar No. 53708
SOUTHERN ENVIRONMENTAL LAW CENTER
601 W. Rosemary Street, Suite 220
Chapel Hill, NC 27516
Telephone: (919) 967-1450
Fax: (919) 929-9421
njimenez@selcnc.org

Attorney for SACE

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Comments of the Southern Alliance for Clean Energy, as filed today in Docket Nos. E-2, Sub 1170 and E-7, Sub 1169, has been served on all parties of record by electronic mail or by deposit in the U.S. Mail, first-class, postage prepaid.

This 8th day of April, 2019.

s/ Nick Jimenez