

1 PLACE: Dobbs Building, Raleigh, North Carolina
2 DATE: September 4, 2018
3 DOCKET NO.: E-2, Sub 1170
4 E-7, Sub 1169
5 TIME IN SESSION: 2:00 P.M. TO 5:38 P.M.
6 BEFORE: Chairman Edward S. Finley, Jr., Presiding
7 Commissioner ToNola D. Brown-Bland
8 Commissioner Jerry C. Dockham
9 Commissioner James G. Patterson
10 Commissioner Lyons Gray
11 Commissioner Daniel G. Clodfelter
12 Commissioner Charlotte A. Mitchell
13

14 IN THE MATTER OF:
15 Petition of Duke Energy Progress, LLC,
16 and Duke Energy Carolinas, LLC,
17 Requesting Approval of Green Source
18 Advantage Program and Rider GSA to
19 Implement G.S. 62-159.2
20 Oral Argument
21
22
23
24

1 A P P E A R A N C E S:

2 FOR DUKE ENERGY CAROLINAS, LLC, AND

3 DUKE ENERGY PROGRESS, LLC:

4 Jack E. Jirak, Esq.

5 Associate General Counsel

6 Duke Energy Corporation

7 P.O. Box 1551/NCRH 20

8 Raleigh, North Carolina 27602

9

10 E. Brett Breitschwerdt, Esq.

11 McGuireWoods, LLP

12 434 Fayetteville Street, Suite 2600

13 Raleigh, North Carolina 27601

14

15 FOR NORTH CAROLINA SUSTAINABLE ENERGY

16 ASSOCIATION:

17 Benjamin W. Smith, Esq.

18 Regulatory Counsel for NCSEA

19 Peter H. Ledford, Esq.

20 General Counsel for NCSEA

21 4800 Six Forks Road, Suite 300

22 Raleigh, North Carolina 27609

23

24

1 A P P E A R A N C E S Cont'd.:

2 FOR NORTH CAROLINA CLEAN ENERGY

3 BUSINESS ALLIANCE (NCCEBA):

4 Karen M. Kemerait, Esq.

5 Smith Moore Leatherwood, LLP

6 434 Fayetteville Street, Suite 2800

7 Raleigh, North Carolina 27601

8

9 FOR SOUTHERN ENVIRONMENTAL LAW CENTER:

10 Peter D. Stein, Esq.

11 601 W. Rosemary Street, Suite 220

12 Chapel Hill, North Carolina 27516

13

14 FOR UNIVERSITY OF NORTH CAROLINA

15 AT CHAPEL HILL:

16 M. Gray Styers, Jr., Esq.

17 Smith Moore Leatherwood, LLP

18 434 Fayetteville Street, Suite 2800

19 Raleigh, North Carolina 27601

20

21

22

23

24

1 A P P E A R A N C E S Cont'd.:

2 FOR APPLE, INC. AND GOOGLE, LLC:

3 Marcus W. Trathen, Esq.

4 Brooks, Pierce, McLendon, Humphrey

5 & Leonard, LLP

6 Suite 1700, Wells Fargo Capitol Center

7 150 Fayetteville Street

8 Raleigh, North Carolina 27601

9

10 FOR WAL-MART STORES EAST, LP

11 AND SAM'S EAST, INC:

12 Carrie M. Harris, Esq.

13 Spilman Thomas & Battle, PLLC

14 110 Oakwood Drive, Suite 500

15 Winston-Salem, North Carolina 27103

16

17 FOR THE USING AND CONSUMING PUBLIC:

18 Jennifer T. Harrod, Esq.

19 Special Deputy Attorney General

20 North Carolina Department of Justice

21 Post Office Box 629

22 Raleigh, North Carolina 27602

23

24

1 A P P E A R A N C E S Cont'd.:

2 FOR THE USING AND CONSUMING PUBLIC:

3 Tim R. Dodge, Esq.

4 Public Staff - North Carolina Utilities Commission

5 4326 Mail Service Center

6 Raleigh, North Carolina 27699-4300

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 P R O C E E D I N G S

2 CHAIRMAN FINLEY: Good afternoon. Let's come
3 to order and go on the record, please. My name is Edward
4 Finley, and with me this afternoon are Commissioners
5 ToNola D. Brown-Bland, Jerry C. Dockham, James G.
6 Patterson, Lyons Gray, Daniel G. Clodfelter, and
7 Charlotte A. Mitchell.

8 The Commission calls now for argument Docket
9 No. E-2, Sub 1170 and Docket No. E-7, Sub 1169 in the
10 Matter of Petition of Duke Energy Progress and Duke
11 Energy Carolinas Requesting Approval of Green Source
12 Advantage Program and Rider GSA to implement G.S. Section
13 62-159.2.

14 On January 23, 2018, pursuant to G.S. 62-159.2
15 and Section 3(b) of Session Law 2017-192, House Bill 589,
16 Duke Energy Progress and Duke Energy Carolinas together
17 filed a petition requesting approval of its proposed
18 Green Source Advantage Program and corresponding rider
19 schedules.

20 On January 26, 2018, the Commission issued an
21 Order establishing this proceeding to review Duke's
22 petition and setting deadlines for filing the petitions
23 to intervene and comments and reply comments in this
24 proceeding.

1 On or after January 30, 2018, the Commission
2 issued orders allowing the following to intervene in this
3 proceeding: the North Carolina Sustainable Energy
4 Association, the North Carolina Clean Energy Business
5 Alliance, Wal-Mart Stores, Inc., and Sam's East, North
6 Carolina Electric Membership Corporation, the United
7 States Department of Defense and other Federal Executive
8 Agencies, the University of North Carolina at Chapel
9 Hill, Apple, Inc., and Google, LLC, and the Southern
10 Alliance for Clean Energy. The North Carolina Attorney
11 General's Office filed a Notice of Intervention pursuant
12 to G.S. 62-20, and the participation of the Public Staff
13 is recognized pursuant to G.S. 62.15(d).

14 Initial comments were filed by the Department
15 of Defense, NCCEBA, NCSEA, Apple, and Google, SACE, Wal-
16 Mart, and the Public Staff. A joint consumer statement
17 of position was filed by New Belgium Brewing, SAS
18 Institute, Sierra Nevada Brewing Company, Unilever, and
19 VF Corporation. Reply comments were filed by Duke,
20 NCCEBA, NCEMC, NCSEA, SACE, UNC-CH, the AGO and the
21 Public Staff.

22 A Joint Motion to Leave or Leave to File Sur-
23 Reply comments was filed by NCCEBA, NCSEA, SACE, UNC-CH,
24 and DOD.

1 On July 16, 2018, the Commission issued an
2 Order Scheduling an Oral Argument in this proceeding at
3 this time and this place. The Commission is in receipt
4 of proposed order of presentation by parties and estimate
5 of time for argument, and the Commission understands that
6 the parties in this proceeding have been afforded an
7 opportunity to review and comment on this proposed order
8 of presentation.

9 Anybody object to this order of presentation
10 that had been agreed upon by the parties?

11 (No response.)

12 We will proceed in that fashion, then.

13 MS. HARROD: Chairman Finley?

14 CHAIRMAN FINLEY: Yes.

15 MS. HARROD: I'm not sure what you have in
16 front of me in that -- in front of you in that regard,
17 but the Attorney General's Office would like to go right
18 before the Public Staff, as is customary, and I didn't
19 hear any objection to that.

20 CHAIRMAN FINLEY: Any objection to that?

21 (No response.)

22 MS. HARROD: Okay. Thank you.

23 CHAIRMAN FINLEY: All right. We'll -- let me
24 -- let's see. Let me see if there are any conflicts.

1 Under the State Ethics Act, I remind all members of the
2 Commission they need to avoid conflicts of interest, and
3 inquire whether any members of the Commission has a known
4 conflict of interest with regard to the matters coming
5 before the Commission this afternoon?

6 (No response.)

7 There appear to be no conflicts, so we'll
8 proceed, and I'll call upon the parties to address
9 themselves through counsel, beginning with the Applicant.

10 MR. JIRAK: Good afternoon, Commissioners.
11 Jack Jirak and Brett Breitschwerdt on behalf Duke Energy.

12 MS. KEMERAIT: Good afternoon. Karen Kemerait
13 with Smith Moore Leatherwood in Raleigh, and I'm here on
14 behalf of North Carolina Clean Energy Business Alliance.

15 MR. STEIN: Good afternoon. Peter Stein with
16 the Southern Environmental Law Center on behalf of the
17 Southern Alliance for Clean Energy.

18 MR. SMITH: Good afternoon. Ben Smith on
19 behalf of the North Carolina Sustainable Energy
20 Association.

21 MR. STYERS: Good afternoon. I'm Gray Styers
22 with the law firm of Smith Moore Leatherwood on behalf of
23 the University of North Carolina at Chapel Hill.

24 MR. TRATHEN: Good afternoon. I'm Marcus

1 Trathen with the law firm Brooks, Pierce. I'm here on
2 behalf of the Intervenors Apple and Google.

3 MS. HARROD: Jennifer Harrod with the North
4 Carolina Attorney General's Office.

5 MR. DODGE: Good afternoon. I'm Tim Dodge
6 with the Public Staff. We represent the Using and
7 Consuming Public.

8 MS. HARRIS: Good morning. Carrie Harris and
9 the law firm Spilman Thomas & Battle on behalf of Wal-
10 Mart Stores East, LP and Sam's East, Inc.

11 MR. LEDFORD: Peter Ledford also on behalf of
12 the North Carolina Sustainable Energy Association.

13 CHAIRMAN FINLEY: All right. Duke?

14 Before you start there, one of the things we
15 want to do is give the Commissioners opportunity to ask
16 questions, and I know we've got some general guidelines
17 as to how much time people are going to take, but we may
18 interrupt to ask questions, and if we do, don't -- we're
19 not going to hold you too -- too closely to your
20 estimates of time, so go right ahead.

21 MR. JIRAK: Thank you, Mr. Chairman. Once
22 again, Jack Jirak on behalf of Duke Energy.

23 Duke Energy strongly supported the enactment of
24 HB 589, which established a number of new procurements

1 that significantly expanded renewable energy procurement
2 adoption opportunities for Duke Energy's customers over
3 and above the state's REC's requirements.

4 More specifically, HB 589 requires the
5 companies to competitively procure significant renewable
6 energy resource capacity over the next three to four
7 years to serve our customers, while also providing
8 options for small retail customers to self direct
9 procurement of some or all of the energy needs from
10 renewable energy through community solar and other
11 programs.

12 In addition, Part III of the legislation also
13 enables large customers, including the UNC system and the
14 state's military installations, to direct the companies
15 to procure renewable energy on their behalf.

16 Duke filed the Green Source Advantage Program
17 in order to implement this large customer program and
18 fully supports implementation of the program to offer
19 eligible customers an opportunity to voluntarily direct
20 procurement of new renewable resources in North Carolina.

21 Now, as is evident from the record, there has
22 been some fairly substantial disagreement between the
23 parties, much of which stem from fundamental differences
24 of opinion regarding the purpose of the GSA Program. But

1 Duke has been engaged in dialogue with its customers
2 regarding potential modifications to the program, and
3 those conversations were further broadened in response to
4 the Commission's Joint July 16th Order. And I do want to
5 take a moment to thank all the parties for their
6 constructive dialogue over the past month.

7 CHAIRMAN FINLEY: We encourage constructive
8 dialogue.

9 MR. JIRAK: Understood., Because this is a
10 customer program, Duke has focused particular energy and
11 attention on engaging with the potential GSA customers in
12 attempting to identify alternative program structures
13 that would both meet the objectives of those customers,
14 while also aligning with the statutory directives for the
15 program.

16 In some cases the gap between what particular
17 customers sought to achieve from the program and what the
18 statute provides for was too significant to bridge, and
19 this was particularly true in the case of those customers
20 or other Intervenors that advocated for a program design
21 that would have provided for guaranteed cost savings, and
22 I will come back to that later.

23 But we're very proud of the fact that through
24 meaningful collaboration with a customer that had

1 expressed significant interest in the GSA Program, that
2 is, Wal-Mart, Duke was able to reach consensus on an
3 alternative self-supply program option that both met Wal-
4 Mart's needs in terms of overall program design, but also
5 conformed to the statutory structure for the program.

6 I'm going to spend some time later providing
7 more detail on the Wal-Mart settlement, but first I want
8 to provide some overall context for the Commission as it
9 considers this issue.

10 Now, undoubtedly, there's an inherent
11 complexity to the GSA Program because it involves three
12 parties engaged in a somewhat complex transaction
13 involving multiple payment streams. But the key question
14 before this Commission is actually a pretty simple one,
15 and that question is what is the appropriate price to pay
16 for the resources to be procured to the GSA Program?
17 Because after the dust settles in the GSA transaction,
18 that is, after the GSA customer pays their service charge
19 and after the GSA customer receives a bill credit from
20 Duke, and after the PPA supplier is paid under the terms
21 of the PPA, there is a final ultimate cost of each
22 megawatt hour of energy that's going to be generated in
23 connection with the GSA Program.

24 In determining what is the appropriate cost for

1 non-participating customers for that megawatt -- megawatt
2 of energy is the most substantial issue to be resolved by
3 the Commission in this proceeding, and it's the one that
4 has been most hotly contested between the parties.

5 But in resolving that question, the Commission
6 is guided by the clear and unequivocal guiding principle
7 of the statute which says that non-participating
8 customers must be held neutral by the program, neither
9 advantaged nor disadvantaged. And with this statutory
10 guidance in mind, it further sharpens the key question
11 that we're -- we are answering here today, and that is
12 what is the appropriate price to be paid for the GSA
13 resources that will hold non-participating customers
14 neutrally?

15 As we think about this fundamental policy
16 question, it's important to step back and see the big
17 picture because what this Commission determines to be the
18 appropriate price for these resources will have a real
19 dollar impact on non-participating customers, as HB 589
20 also amended the fuel clause to enable timely recovery of
21 all non-administrative GSA costs.

22 In the Company's reply comments we presented a
23 very simple, but meaningful, estimate to illustrate the
24 cost impact of the different positions of the parties.

1 So in Figures 1 and 2 on pages 13 and 14 of the Company's
2 reply comments we contrasted the 20-year cost of the
3 program under certain recommendations put forth by the
4 Intervenor under which GSA customers will be
5 compensated, that is, receive the bill credit at the
6 Company's 20-year administratively established avoided
7 cost. And we contrasted that total program cost against
8 the Company's proposed structure which would have tied
9 the bill credit to the average price from the CPRE RFP,
10 and when you line those two up and compare the total cost
11 under the Intervenor recommendation that would compensate
12 on a 20-year avoided cost and you compare it with Duke's
13 proposal, the cost difference is \$350 million over the 20
14 years for the full capacity of the program. So it's a
15 really meaningful cost difference, depending on how this
16 program is structured and -- and what costs flow through
17 to non-participating customers.

18 Now, I think it's important to understand why
19 the Company chose to design its initial program structure
20 around the market--- the CPRE market price. As simply as I
21 can state it, if the Company is able to go out in the
22 marketplace and through a competitive market-based RFP
23 procure resources for a particular price, our non-
24 participating customer is truly held neutral if at the

1 same time the Company goes out and procures resources
2 through a GSA Program and pays a higher price for those
3 same resources just because it's a different program.

4 And just so the Commission is clear, obviously
5 the CPRE RFP is still in process and we don't have final
6 results from Tranche 1 of the CPRE, but we have good
7 market data to give us some pretty -- pretty accurate
8 estimates we think about where prices are going to come
9 in under the CPRE RFP. And comparable RFPs that have
10 been conducted in the recent past, including an RFP in
11 the Southeast United States that were conducted recently,
12 have shown that we can expect prices somewhere between 30
13 and \$36 in market-based solar RFPs.

14 So once again, the question we ask ourselves is
15 if the market is able to deliver dispatchable renewable
16 resources at a particular price -- I'm going to come back
17 to that idea later -- but if we can -- if Duke can, on
18 behalf of the customers, procure dispatchable renewable
19 resources at a particular price, we'll call it "x"
20 dollars, are non-participating customers truly held
21 neutral if the Company goes out and pays "x" plus
22 additional amounts for GSA resources? And we think the
23 answer to that question is no.

24 Mr. Chairman, with your permission, I have a

1 very simple handout to provide to the Commission and
2 others, if that's all right.

3 CHAIRMAN FINLEY: Well, while you're handing it
4 out, Mr. Jirak, it seems to me that -- first of all, does
5 the statute define avoided cost?

6 MR. JIRAK: Excuse me?

7 CHAIRMAN FINLEY: Does the statute define
8 avoided cost?

9 MR. JIRAK: It does not.

10 CHAIRMAN FINLEY: Yeah. Well, I think -- seems
11 to me that some of the people who are arguing with you
12 would say that administratively determined avoided cost
13 under PURPA are intended to leave the -- the non-
14 participating customers neutral. So if you -- if the
15 theory is you follow the PURPA determination of avoided
16 cost, then the customers are held neutral, and I think --
17 seems to me that that's one of the fundamental
18 differences between you and some of these Intervenors in
19 the case.

20 MR. JIRAK: That's a great -- great comment,
21 great question. And this chart actually helps illustrate
22 some -- some of the nuance here because it's one thing to
23 -- to assert that we should use an administratively
24 established avoided cost, and we don't think necessarily

1 that's required in the statute, but even if that is your
2 conclusion, as this chart shows, there's dramatic
3 differences in the amount of -- amount of compensation
4 that's due to pay on the time period over which you
5 establish your avoided cost, time period over which
6 you're forecasting your avoided cost.

7 And as this Commission is well aware, the
8 policy direction of the State and the Commission has been
9 to move away from the longer term avoided cost because of
10 the overpayment risk that we know exists when the long-
11 term arrangements are entered into based on a longer term
12 avoided cost.

13 CHAIRMAN FINLEY: So you would say 589 is, in
14 part, a reaction to the avoided cost rates and -- and
15 terms and conditions that this Commission has set, like
16 in E-2 -- E-100, Sub 140?

17 MR. JIRAK: That's correct. There was a
18 recognition that there's overpayment risk that is -- that
19 is -- needs to be addressed in the way in which we
20 compensate PURPA resources.

21 And this chart, I think, illustrates exactly
22 what we were just discussing, which is -- this is a very
23 simple chart we've provided the Intervenor's before. It's
24 not intended to be the final numbers. It's just intended

1 to give an order of magnitude for the cost that we're
2 talking about, depending on the policy conclusions that
3 we make here today with respect to the GSA Program.

4 So moving from left to right, again, this is a
5 simple chart to just compare prices. We see on the far
6 left a median bid from a -- from a recent solar RFP in
7 Colorado shows bids below \$30 in Colorado. We next move
8 to the -- a current vintage DEP five-year avoided cost.
9 The next bar shows the price of a recent RFP from Georgia
10 for solar resources. Then we see the 10, the 15, the 20-
11 year avoided cost.

12 So, again, these numbers are not the final
13 numbers, but they're intended to illustrate the stark
14 difference in compensation that would be paid by non-
15 participating customers depending on how we structure
16 this program. And what is clear is that market prices
17 available today are significantly lower than
18 administratively established avoided cost, the long-term
19 administratively established avoided cost.

20 And in my mind, paying a price substantially
21 greater than the market price for renewable resources
22 would be like going into a Lowe's Home Improvement store
23 to buy a wrench, but insisting to pay more than the
24 labeled price for the wrench based on -- on your own

1 forecasted future value of that wrench. That would be
2 kind of an insane thing to do, and we think the same is
3 true here. The market determined price for the wrench is
4 the correct price, and non-participating customers will
5 be disadvantaged if Duke pays for resources at a price
6 that is higher than the market is willing to offer.

7 We touched on this earlier, Mr. Chairman, but
8 establishing pricing for the GSA Program based on a long-
9 term avoided cost would also be a movement in the exact
10 opposite policy direction from what is contemplated in HB
11 589 and the most recent avoided cost policy conclusions
12 of this Commission.

13 In fact, the Intervenor recommendation results
14 in an outcome that is unprecedented in the state. North
15 Carolina has never relied upon a 20-year administratively
16 established avoided cost as a reasonable basis for a
17 long-term arrangement. And that is, as we discussed,
18 because both the Commission and the General Assembly have
19 recognized the significant overpayment risk that all
20 customers bear when long-term arrangements are entered
21 into based on the Company's long-term administratively
22 established avoided cost.

23 The Commission rejected the extension of
24 standard offer avoided cost of 20 years during the Sub

1 140 proceeding that you referenced and further agreed
2 with Duke and Public Staff to modify standard offer PPA
3 terms to 10 years and limit standard offer eligibility to
4 one megawatt in its Sub 148 order. This arrangement was
5 also reflected in HB 589.

6 In summary, the very premise of the Intervenor
7 recommendation that energy procured at a long-term
8 administratively established avoided cost holds non-
9 participating customers harmless, that premise has been
10 flatly rejected by the Commission and the General
11 Assembly, and there's simply no basis in the GSA statute
12 itself for asserting that -- that the General Assembly
13 intended for such a radical departure from the overall
14 policy direction of the State.

15 In addition, in a number of cases Intervenor
16 argued for a program that would provide for guaranteed
17 cost savings. However, as the saying goes, there's no
18 free lunch, and under the Intervenor proposal those
19 guaranteed cost savings are, in reality, just a shift
20 from participating customers to non-participating
21 customers.

22 Requiring non-participants to pay above market
23 rates for energy with the profits enuring to the
24 participating GSA customers does not comport with HB

1 589's reform to the State's renewable energy procurement
2 framework, nor does it satisfy the GSA Program statute's
3 express mandate that non-participating customers be held
4 neutral, neither advantaged nor disadvantaged by the
5 program.

6 To be clear, despite the Intervenor's efforts
7 to characterize this activity as hedging, their proposal
8 actually does not require the GSA customer to assume any
9 degree of risk, which is a necessary factor for an
10 activity to be considered hedging. Rather, what these
11 parties appear to envision is a Commission established
12 trading platform for engaging in arbitrage activities,
13 enabling them to procure PPAs in the market below the
14 administratively derived forecasted avoided cost price,
15 and then require non-participants to pay the artificial
16 savings difference through the GSA Program. This
17 proposed structure cannot be reconciled with the -- with
18 the plain reading of the statute.

19 Now, I want to pivot to provide a little more
20 detail on the Wal-Mart settlement recently filed with the
21 Commission, explain why we are really proud of this
22 settlement as a constructive move forward with this
23 program.

24 A GSA Program structured around hourly marginal

1 cost was an idea that was noted by Public Staff as a
2 potential program design. And, in fact, the Georgia
3 Public Service Commission recently implemented a marginal
4 cost-based program nearly identical in structure to the
5 Wal-Mart settlement for -- in the case of Georgia for
6 large commercial industrial customers, and that program
7 was fully subscribed.

8 And the Duke business team and the Wal-Mart
9 team deserve a lot of credit for their work in fashioning
10 the settlement. The key policy solution in the Wal-Mart
11 settlement is that the bill credit, the bill credit
12 that's received by the GSA customer, is tied to Duke's
13 day-ahead marginal cost. What this means is that the
14 price that non-participating customers will effectively
15 be paying are the true avoided costs on the system. In
16 other words, non-participating customers will be --
17 essentially be paying the exact same price for that
18 megawatt hour of electricity that they otherwise would be
19 paying absent the GSA Program. In our view, that clearly
20 satisfies the statutory requirement of holding non-
21 participating customers neutral.

22 I will also note that informal conversations
23 that the Company has had with other potential GSA
24 customers have indicated that there -- there are other

1 customers that, in fact, may be interested in the
2 settlement structure, and we -- we currently have in hand
3 an executed letter of support from Wells Fargo indicating
4 an interest in support for this structured program. So
5 we think there is real support, from a customer
6 perspective, for this program.

7 So in summary, Duke and Wal-Mart collaborated
8 to creatively identify an alternative program structure
9 that both satisfied Wal-Mart's needs while also ensuring
10 that non-participating customers are held neutral, and we
11 believe that as a result, the Commission should approve
12 the settlement agreement.

13 In addition to the Wal-Mart settlement, the
14 Company has offered a further concession by agreeing to
15 offer bill credit based on the five-year administratively
16 established avoided cost with a refresh every five years
17 as applicable. This was an offer that was made in the
18 context of the stakeholder discussions that we've been
19 engaging in over the past month. And we see this as
20 another concession that's appropriate in light of the
21 dialogue that was occurring in -- in those stakeholder
22 discussions, and it aligns with and it's consistent with
23 HB 589 in that resources greater than one megawatt do
24 receive a five-year avoided cost currently. So we think

1 that structure aligns with HB 589 and is an appropriate
2 additional self-supply option to -- to make to customers.

3 So Commissioners, I spent a lot of time
4 explaining the bill credit. I'm going to pivot to some
5 other structural issues unless there's questions that you
6 all have about the bill credit.

7 CHAIRMAN FINLEY: Well, do you have questions?

8 (No response.)

9 CHAIRMAN FINLEY: Seems to me that's the big
10 issue, the bill -- the bill credit. And as I read the
11 statute, the credit is not -- the ceiling of the bill
12 credit is to be avoided cost undefined, and it seems to
13 me that's where a lot of disagreement is, how do you
14 define avoided cost as administratively determined
15 avoided cost projected over 20 years or something more or
16 less than that. And the other provision in the statute
17 says that you're supposed to keep the rest of the
18 customers neither advantaged nor disadvantaged. And
19 we've got a wide spectrum of ways to implement this
20 statute. Are you aware of any recommendation that we
21 received that is unlawful under the statute that we're
22 dealing with, or is it just a difference of opinion as to
23 what we ought to do, how we ought to do it?

24 MR. JIRAK: You know, off the top of my head, I

1 don't -- I don't believe that any of them are unlawful,
2 but I would say that establishing long-term arrangement
3 based on a -- based on a 20-year or even a 15 or 10-year
4 administratively established avoided cost is contrary to
5 the overall spirit and intent of HB 589 and, again, runs
6 very much counter to the overall policy direction of the
7 state, and we simply don't see any support for that view
8 in the statute itself.

9 CHAIRMAN FINLEY: All right. If a renewable
10 developer enters into a contract beyond five years in the
11 term, that developer is not entitled to a PURPA
12 determined avoided cost contract; is that not right?

13 MR. JIRAK: That's correct.

14 COMMISSIONER CLODFELTER: I've got a number of
15 questions about the Wal-Mart proposed settlement, and
16 first is sort of the high level, how it fits into the
17 overall structure of the program.

18 MR. JIRAK: Sure.

19 COMMISSIONER CLODFELTER: Is it a third option?

20 MR. JIRAK: Correct.

21 COMMISSIONER CLODFELTER: It doesn't displace
22 either of the other two --

23 MR. JIRAK: Correct.

24 COMMISSIONER CLODFELTER: -- ideas you put

1 forward, including the adjustment to the self-supply that
2 you have described?

3 MR. JIRAK: That's right. It's an additional
4 self-supply option.

5 COMMISSIONER CLODFELTER: It's an additional
6 self-supply option. Okay.

7 I've got -- I don't know if you have it close
8 at hand, but I've got the letter that we received and the
9 summary of the program, so I'm going to ask some
10 questions --

11 MR. JIRAK: Sure.

12 COMMISSIONER CLODFELTER: -- off of that.
13 First off, just -- just I need to be able to understand
14 the differences in the formula for calculating the hourly
15 rate that DEP is -- and DEC are going to use.

16 MR. JIRAK: Okay.

17 COMMISSIONER CLODFELTER: So will you walk me
18 through -- there are different words. I think I
19 understand that they're meant to come to the same
20 place --

21 MR. JIRAK: Yeah.

22 COMMISSIONER CLODFELTER: -- but walk me
23 through why the differences.

24 MR. JIRAK: Okay. I'm going to see if I can

1 grab a copy of the letter. I will -- well, let me grab
2 the letter and then I'll --

3 COMMISSIONER CLODFELTER: That's probably a
4 good thing to do.

5 MR. JIRAK: I will say I'm certainly not an
6 expert in the manner in which the day-ahead Lambdas are
7 calculated, so I probably can't answer the most -- the
8 more detailed questions you have, but I can tell you that
9 fundamentally, they both get to the same conceptual
10 number, which is what is Duke's forecast, the day-ahead
11 forecast of the hourly cost in each hour.

12 COMMISSIONER CLODFELTER: I understand. Well,
13 I guess what -- and maybe -- I'm even less expert than
14 you are, so you can at least take me one step down --

15 MR. JIRAK: All right.

16 COMMISSIONER CLODFELTER: -- the road further.
17 So, for example, DEC uses -- for the capacity component
18 of the hourly rate they use marginal capacity cost during
19 hours with generation constraint. DEP seems to use a
20 formula that, if I'm guessing right, looks like whenever
21 they think they're below minimum reserve margin, if I'm
22 reading it correctly. So what's the difference between
23 generation constraint and what DEP is proposing?

24 MR. JIRAK: Yeah. Again, subject to check, if

1 I recall, the -- in one case it's an absolute fixed
2 number. I think it's 1,600 megawatts if your -- if the
3 reserve margin drops below 1,600 megawatts.

4 COMMISSIONER CLODFELTER: That's generation
5 constraint?

6 MR. JIRAK: Yeah. And that -- and then in --
7 for one jurisdiction it's a percentage and one it's an
8 absolute number, but bottom line is when you hit that
9 threshold, that's when the capacity values --

10 COMMISSIONER CLODFELTER: Mr. Chairman, I don't
11 want to take time this afternoon with these things. If
12 I'm asking a question that you would rather provide a
13 more detailed answer in --

14 MR. JIRAK: Yeah.

15 COMMISSIONER CLODFELTER: -- writing, since
16 this is not an evidentiary proceeding, I'll take it later
17 if you say --

18 MR. JIRAK: Sure.

19 COMMISSIONER CLODFELTER: -- I'll get you an
20 answer to that later. That's --

21 MR. JIRAK: That makes a lot of sense.

22 COMMISSIONER CLODFELTER: Okay. In the -- the
23 agreement is a three-party agreement. I understand that.
24 And I'm looking -- if you have it, I hope you do, because

1 I can read it to you, but that's not very efficient.

2 Look at page 3 of the program description with Wal-Mart.

3 MR. JIRAK: Are you referencing the cover
4 letter or the --

5 COMMISSIONER CLODFELTER: No. I'm representing
6 the -- I'm referencing the -- what do you call it?

7 MR. JIRAK: Settlement Agreement.

8 COMMISSIONER CLODFELTER: Yeah. The actual --
9 sort of the details, the numbered paragraphs.

10 MR. JIRAK: Yeah. I'm with you.

11 COMMISSIONER CLODFELTER: Okay. On page 3
12 under the PPA, I think I understand this, and about
13 midway down through there, there is a sentence that
14 begins, "In periods in which the PPA price," which is the
15 hourly rate because the PPA price cannot exceed the
16 hourly rate, it is the hourly rate, "in which the PPA
17 price is less than the negotiated price," I'll call it;
18 that's the GSA product charge -- I call it the negotiated
19 price -- "additional amounts may be due from the
20 participating company," that's the customer, "to the
21 supplier." I understand that. What additional amounts?
22 How are they calculated? Is it just the Delta between
23 the hourly charge and the negotiated price --

24 MR. JIRAK: You got it. That's --

1 COMMISSIONER CLODFELTER: -- the hourly rate?

2 I'm curious about that because there -- I can envision
3 circumstances in which when the parties are doing their
4 negotiations, they may agree to allocate risk such that
5 either the supplier agrees to take some additional risk
6 or the customer agrees to absorb some risk because
7 they're getting some other benefits out of -- out of the
8 program, but that's not what's intended here. The
9 additional payment would be the Delta?

10 MR. JIRAK: That's exactly right.

11 COMMISSIONER CLODFELTER: Exactly right. And
12 that's the way Wal-Mart understands it, too? (To Ms.
13 Harris) You can nod if that's correct.

14 MS. HARRIS: Yes, Your Honor. And I don't know
15 if it would be helpful. I have here a triangle --

16 COMMISSIONER CLODFELTER: Well, I'll wait,
17 then, till you get -- I've got a triangle that we
18 developed, too, and I think maybe my triangle I can -- I
19 can compare to yours when we get to it.

20 MS. HARRIS: But, yes, Your Honor.

21 COMMISSIONER CLODFELTER: Okay.

22 MS. HARRIS: We understand that it either
23 needed to be a charge on the Delta, but I think that what
24 we would also indicate is that we believe that all of

1 those items are addressed in the negotiation of the
2 product charge on the front end --

3 COMMISSIONER CLODFELTER: Right.

4 MS. HARRIS: -- of the transaction. And so
5 ultimately it is the Delta, as you discussed, as to
6 whether --

7 COMMISSIONER CLODFELTER: Okay.

8 MS. HARRIS: -- it's a charge or a credit.

9 COMMISSIONER CLODFELTER: Got it. I'm going to
10 ask some questions about the negotiated -- price
11 negotiations in a minute, but let me stay with this for a
12 minute.

13 So flip that scenario around that's in that
14 sentence and read the sentence as follows: In periods in
15 which the PPA price is greater than the GSA product
16 charge, what happens then?

17 MR. JIRAK: That's reflected in credits on the
18 customer's bill.

19 COMMISSIONER CLODFELTER: So there would be
20 additional credits on the bill?

21 MR. JIRAK: So if the PPA --

22 COMMISSIONER CLODFELTER: Greater than the
23 hourly char--- hourly rate?

24 MR. JIRAK: Yeah. I have -- actually have a

1 specific example I could walk you through.

2 COMMISSIONER CLODFELTER: I would love it.

3 MR. JIRAK: Does that sound --

4 COMMISSIONER CLODFELTER: Yeah.

5 MR. JIRAK: Okay. If you don't mind, we'll
6 pass this out, and it'll walk through --

7 COMMISSIONER CLODFELTER: We try to do some
8 examples, too, to follow --

9 MR. JIRAK: Yeah, I understand. It kind of
10 makes your brain hurt.

11 COMMISSIONER CLODFELTER: -- but your examples
12 are probably a little more accurate.

13 MR. JIRAK: I understand.

14 COMMISSIONER CLODFELTER: Okay.

15 MR. JIRAK: This is somewhat complex. And so
16 what is being passed out is an example of two future
17 hours, hypothetical scenario, involving the Wal-Mart
18 settlement --

19 COMMISSIONER CLODFELTER: That's exactly what I
20 want.

21 MR. JIRAK: Okay. We'll walk you through those
22 prices. I'll give you a chance to get that document.

23 All right. So this is an illustration of the Settlement
24 Agreement. In this hypothetical scenario we're going to

1 assume a negotiated price of \$40 a megawatt hour through
2 a renewable supplier, and that \$40 becomes the GSA
3 service charge under the GSA service agreements paid by
4 the GSA customer. And the -- and the GSA customer's
5 receipt is agreeing to receive the day-ahead system
6 Lambda as the bill credit.

7 So we're going look at two hours in the future.
8 Again, because your marginal costs vary over time, these
9 are just hypothetical hours in the future, one in which
10 the marginal cost exceeds the negotiated price and one in
11 which the negotiated rate is less than the marginal
12 price. So let's walk through how the math works out
13 there.

14 Scenario 1 on page 2 of the Settlement
15 Agreement illustration assumes an hourly day-ahead system
16 Lambda of \$55 for this particular hour in the future, \$55
17 per megawatt hour, and the negotiated price is \$40. So
18 the marginal cost is now above the negotiated rate. The
19 GSA service charge is \$40 a megawatt hour. That's the
20 negotiated price. That is paid by the GSA customer to
21 Duke, and Duke assigns this payment to the GSA renewable
22 supplier pursuant to the GSA service agreement. So the
23 GSA renewable supplier is getting what they bargained
24 for, the \$40.

1 The customer receives a bill credit of \$55, and
2 the GSA renewable -- excuse me -- the GSA renewable
3 supplier assigns its right for the payment of the hourly
4 day-ahead system Lambda under the PPA to the customer, so
5 therefore the GSA customer receives that \$55 as a bill
6 credit.

7 So below the two bullets, then, there's a quick
8 summary. GSA customer pays \$50 service charge and
9 receives a bill credit of \$55, and the GSA renewable
10 supplier receives \$40 from Duke under the service
11 agreement, so that's -- that's the net.

12 Next line down, "In sum, the total cost to non-
13 participating customer," so this is what's the view of
14 the non-participating customers in this transaction. The
15 total cost to the non-participating customer for the
16 megawatt hour is \$55 because \$40 was paid to the
17 renewable supplier and there was a \$15 Delta between the
18 GSA charge and the bill credit. So we think that's the
19 right outcome because the marginal cost in that hour is
20 \$55, and that's the cost that's borne by non-
21 participating customers. Does that make sense?

22 COMMISSIONER CLODFELTER: It makes perfect
23 sense. And I want you to go all the way through the
24 example, but I want to stop you on this because I want to

1 -- want to capture the point. You've, then, defined
2 avoided cost for statutory purposes as your day-ahead
3 forecast?

4 MR. JIRAK: That's correct.

5 COMMISSIONER CLODFELTER: Not as an
6 administrative concept, but as -- your day-ahead forecast
7 becomes your avoided cost?

8 MR. JIRAK: Well --

9 COMMISSIONER CLODFELTER: That's how you
10 maintain neutrality?

11 MR. JIRAK: Yes. We're -- yes, we --

12 COMMISSIONER CLODFELTER: That's how you
13 preserve neutrality?

14 MR. JIRAK: That's correct.

15 COMMISSIONER CLODFELTER: Okay. Go ahead with
16 the -- I gotcha. I thought that was the case, but --

17 MR. JIRAK: Yeah.

18 COMMISSIONER CLODFELTER: -- I needed you to
19 tell me.

20 MR. JIRAK: You're getting this quicker than I
21 got it, I'll tell you that for sure.

22 So Scenario 2 is just another future hour. In
23 this case this hour, the system Lambda has now dropped
24 below the negotiated price, so the system Lambda is \$30 a

1 megawatt hour, same negotiated PPA price of \$40 so same
2 GSA transaction, just in a future hour lower marginal
3 cost on the system.

4 Again, we'll walk through the numbers very
5 quickly. GSA service charge, \$40 a megawatt hour, that's
6 paid by the GSA customer to Duke. Duke assigns this
7 payment to the GSA renewable supplier. The renewable
8 supplier gets the \$40 that they bargained for, the bill
9 credit of \$30 a megawatt hour. The GSA renewable
10 supplier assigns its right to the payment of the hourly
11 day-ahead system Lambda on the PPA to the GSA customer,
12 and the GSA customer receives \$30 a megawatt hour as a
13 bill credit. In summary, the GSA customer pays \$40
14 service charge and receives a bill credit of only \$30,
15 while the GSA renewable supplier receives \$40 from Duke
16 under the service agreement.

17 So in sum, the total cost from a non-
18 participating customer perspective for that megawatt hour
19 of energy is \$30 because you paid \$40 to them, but
20 there's a negative \$10 Delta on the -- on the bill for
21 the GSA customer. So, again, we think that's the right
22 outcome because the marginal cost on the system for that
23 hour was \$30 and that's what non-participating customers
24 are paying.

1 COMMISSIONER CLODFELTER: Thank you. Let me go
2 back to the price negotiation questions. So you guys are
3 really good at day-ahead hourly forecasting, you know.
4 You know what it's going to be better than anybody knows
5 what it's going to be. So I'm a customer or I'm a
6 supplier and I want to negotiate a GSA product services
7 contract. I don't have nearly that knowledge that you
8 have. How in the world can I conduct an intelligent
9 negotiation about setting the contract price, the GSA
10 product charge? How -- what's my information that I have
11 about knowing what your day-ahead hourly forecasts are
12 going to be over the lifetime of the contract? How do I
13 do that price negotiation?

14 MR. JIRAK: That's --

15 COMMISSIONER CLODFELTER: I'm the energy
16 procurement manager for --

17 MR. JIRAK: Yeah.

18 COMMISSIONER CLODFELTER: -- a large customer
19 or I'm a renewable developer. How in the world do I know
20 what my benchmarks are for my price negotiations?

21 MR. JIRAK: Yeah. Great question. It's
22 probably one that Wal-Mart will be able to give you a
23 more detailed answer, but let me quickly tell you --

24 COMMISSIONER CLODFELTER: Well, I put it out

1 there because I think everybody ought to talk about it --

2 MR. JIRAK: Yeah.

3 COMMISSIONER CLODFELTER: -- but it -- I like
4 your mechanism here, but I'm not sure how to make it
5 work --

6 MR. JIRAK: Right.

7 COMMISSIONER CLODFELTER: -- if I'm the
8 participant or the supplier.

9 MR. JIRAK: Right. So a couple of observations
10 I would make, one is we provided historic hourly data to
11 all the Intervenors that were interested in information
12 that would -- that we had time to get in place
13 confidentiality agreements, and obviously we're willing
14 to provide that.

15 So my assumption is that GSA customers, you
16 know, I don't want to speak on behalf of Wal-Mart or
17 others, they take that information and make some --
18 they're utilizing historic information, make some
19 assessments about what they think future avoided costs
20 are going to be based on that historic information.

21 Now, I will say that -- you said that Duke has
22 -- it certainly has more information about how those
23 numbers are forecasted, but just like our
24 administratively established avoided cost, the farther

1 out in time you go, the less certainty there is from
2 anyone's perspective. So I think the customers that
3 choose to participate, just like the customers that fully
4 subscribe to the Georgia program, what they do is they
5 sit down, look at historic costs, and make some estimates
6 about what future costs are going to do.

7 And I also know that there's some -- there's
8 some true hedging value to the program as well, so even
9 if they're not a hundred percent sure, which no one is
10 where future costs are going, to the extent they can lock
11 in a portion of their energy supply at a fixed rate,
12 which is what's happened here, there is some hedging
13 value to it regardless of where our prices actually go.

14 COMMISSIONER CLODFELTER: Okay. Well, you've
15 given me something important, and I may -- I apologize if
16 I missed it, but there's a bullet point, then, in the
17 settlement that says that customers who wish to enter the
18 program can get access to historical information.

19 MR. JIRAK: That's right. We provided a year
20 back historical marginal --

21 COMMISSIONER CLODFELTER: A year back?

22 MR. JIRAK: -- cost information to the
23 intervenors.

24 COMMISSIONER CLODFELTER: Okay, okay.

1 MR. JIRAK: And to Public Staff as well.

2 COMMISSIONER CLODFELTER: What you've got is
3 very -- you know, in the Wal-Mart settlement is very
4 similar, not identical, but very similar to the Georgia
5 Power Program, but they use a look back on the marginal
6 energy charge and you're looking -- using a look forward.
7 Why? What's the difference? Why did they choose that
8 and why are you proposing a look ahead?

9 MR. JIRAK: Yeah. So I'm aware that, yeah,
10 that Georgia Power's is structured on the actual marginal
11 cost that occurs in the system.

12 COMMISSIONER CLODFELTER: Right.

13 MR. JIRAK: I'm not -- I probably can't answer
14 you exactly why we chose to go with a day ahead, I think
15 just related to sort of simplicity and administrative
16 ease, but I do know that our day-ahead forecast is
17 extremely close to the actual avoided cost, so that I
18 think from our perspective there's no meaningful material
19 difference between the day ahead and what the actual
20 marginal cost in the system is. But I can get a little
21 more information for you on that.

22 COMMISSIONER CLODFELTER: That would be fine.
23 I'm just curious about the difference, whether there is
24 anything behind the choice.

1 MR. JIRAK: I think it's mostly administrative
2 ease of getting numbers and having them available in a
3 timely fashion for settling out the price.

4 COMMISSIONER CLODFELTER: Last question about
5 the Wal-Mart settlement, for now at least.

6 MR. JIRAK: Yeah.

7 COMMISSIONER CLODFELTER: I may think of some
8 others for somebody else, but -- so if the customer
9 enters into the Wal-Mart option and negotiates the
10 agreement and everything works under the agreement fine,
11 what, if anything, would not be recovered by Duke and
12 would be left for recovery under the (a)(11) -- (a)(11)
13 clause in the fuel charge? What would be left? You get
14 your administrative cost and your program cost from the
15 participant, and if your -- if your illustration works
16 right, there shouldn't be any unrecovered cost left for
17 the (a)(11) clause.

18 MR. JIRAK: I -- respectfully I don't think
19 that's the case. Let's look at Scenario 1 --

20 COMMISSIONER CLODFELTER: Okay.

21 MR. JIRAK: -- and I'll kind of walk you
22 through that. So --

23 COMMISSIONER CLODFELTER: That's -- okay.

24 MR. JIRAK: In Scenario 1 the customer is

1 paying \$40, right? The GSA customer is paying \$40. But
2 in exchange for paying that \$40, they get a \$55 credit,
3 so you're reducing revenue from that customer by \$15. So
4 the GSA customer is essentially just getting \$15. There
5 is this transaction where they're technically paying a
6 GSA service charge and getting \$55 back, but in essence,
7 they're getting \$15 to their account.

8 In addition to that cost, which is a real cost
9 because it's less revenue from the GSA customer, we're
10 also -- Duke is also paying \$40 to the PPA off-taker, and
11 there's no -- there's no other money from the GSA
12 customer to cover that, so that's a true payment to the
13 PPA provider.

14 So you take the \$40 payment to the -- under the
15 PPA and you take the \$15 credit that's being given to the
16 developer, and you total that to \$55.

17 COMMISSIONER CLODFELTER: You're getting the --
18 you're getting \$40 -- you're getting \$40 from the GSA
19 program participant, from the customer.

20 MR. JIRAK: That's right, but they're getting a
21 credit in exchange for that. They're paying \$40, but
22 they immediately get a credit back \$55. So if I -- so if
23 I go and pay -- buy something in the store and I paid \$40
24 and then they give me \$55 back, what did I pay for that?

1 Well, I didn't pay anything. I got \$15 back for it.

2 COMMISSIONER CLODFELTER: Okay.

3 MR. JIRAK: And so there's no contribution left
4 there from the supplier and -- but at the same time Duke
5 has to turn around and write a check for \$40 to the PPA
6 provider and there's no -- there's no money left to
7 provide that because we've already offset that in the
8 credit. So there is a real cost to be covered by non-
9 participating customers, and in this scenario that cost
10 is \$55.

11 The same holds true in the second scenario.
12 It's just a different -- you get the numbers a little
13 differently, but I -- but there is a cost to be borne by
14 non-participating customers.

15 So I'm going to pivot and talk about just two
16 other structural issues; certainly can talk about other
17 bill credit issues as they come up later. Again, the
18 bill credit is certainly the biggest issue to resolve in
19 this question, but there's a couple other issues that
20 have been contested and one of those is the standard
21 offer option that the Company offered.

22 Now, as we've been discussing, the self-supply
23 option is designed for those GSA customers who have the
24 expertise, the resources to go out, like a Wal-Mart, and

1 go out and negotiate with suppliers and get really good
2 contract pricing terms and bring a supply -- bring a
3 source of supply to the program, but from Duke's
4 engagement with other customers, there are certainly
5 customers out there who are interested in participating
6 in the program, but do not have the expertise or the
7 desire to go out there and identify resources and
8 negotiate price with those customers. And so the concept
9 behind the standard offer option was that we were
10 essentially providing what we refer to internally as the
11 easy button for customers who want to participate but
12 don't want to go out and find their own resources. And
13 so we think this is a good program offering. It's not --
14 it's in addition to the self-supply. It doesn't preclude
15 anyone from participating in self-supply. It just is an
16 additional option for customers who want to participate.
17 Now -- and, again, Duke has heard from particular
18 customers who have indicated some level of interest in
19 participating in a program like that, so we thought there
20 was some value in offering that.

21 Now, if you're going to have a standard offer
22 option, you have to have a mechanism to procure a
23 resource, because if a customer comes to participate in
24 the standard offer and says I want a 30 megawatt

1 participation level, Duke has to turn around and procure
2 a 30 megawatt resource on their behalf, and we intended
3 to do that through an RFP process in order to obtain the
4 most cost effective resources for that customer. Now,
5 what we propose in our application was that that -- the
6 RFP resource that will be used to identify resources for
7 standard offer customers would be the CPRE RFP. And the
8 reason we did that is very simple. Why duplicate all the
9 expense and complexity and time that goes into standing
10 up an RFP when you have a preexisting RFP already in
11 place?

12 Now, certainly the GSA statute doesn't have any
13 express linkage to the CPRE Program and we're not
14 asserting that it does, but just from a pure economic
15 efficiency in limiting administrative costs for
16 participating customers, we don't see any reason why it
17 makes sense to run a whole separate RFP to procure those
18 resources when, again, we have a structure already in
19 place with an independent administrator to ensure that
20 we're procuring the best price resources that the market
21 has to offer. Again, we don't think that structure
22 violates the statute. We just think it makes sense to
23 reduce cost for participating customers.

24 So that's standard offer and the need to have

1 an RFP. I also want to just speak briefly about the PPA
2 and then I'll wrap up.

3 Now, with respect to the PPA form, the Company
4 has proposed using the CPRE PPA form itself.. Now, there
5 are a number of reasons why that PPA was the appropriate
6 agreement to be used for the GSA resources. First, the
7 PPA was based on the Company's existing QF PPA which has
8 been utilized in numerous transactions and proven to be a
9 financeable, commercially reasonable document.

10 Second, the CPRE process provided for two
11 separate rounds of comments in which we received an
12 abundant amount of comments from the marketplace, and we
13 took those comments into consideration and found ways to
14 even further improve the agreement, so that is to say we
15 had a very solid agreement to begin with and we found
16 ways to improve it even further.

17 And finally, obviously the Commission has
18 recently had an opportunity itself to look at that PPA
19 and found it to be a reasonable document. We believe
20 that from a fundamental perspective, that PPA is a good
21 solid document to be used for purpose of the GSA Program.

22 Now, certain parties have objected very
23 strenuously to the control and dispatch provisions in the
24 CPRE PPA which would allow for dispatch of units in the

1 same manner as the Company's generating facilities. Once
2 again, CPRE statute does specifically address that issue,
3 and we recognize the GSA statute is silent with respect
4 to this issue.

5 But this issue comes full circle to the cost
6 value discussion that we were -- that we engaged in
7 earlier, and that is what's the appropriate price to pay
8 for GSA resources in comparison to the expected market
9 clearing price for CPRE. Because in considering that
10 question, it's important to note that the resources
11 procured through CPRE will be fully dispatchable
12 renewable resources, meaning the Company can control
13 those resources in the same manner as the Company's own
14 generating resources and optimize them for the benefit of
15 customers, and the Company also obtains the RECs under
16 the -- under the terms of the CPRE PPA. However, under
17 the GSA PPA, non-participating customers will not be
18 obtaining the RECs, and under the Intervenor
19 recommendation, Duke will have substantially more limited
20 control and dispatch rights over the facilities.

21 And what this discrepancy between what's been
22 proposed for this -- for the GSA PPA and what's in the
23 CPRE PPA only further highlights the sort of mismatch in
24 value that would arise if the Intervenor's'

1 recommendations were adopted, because not only would
2 customers be forced to pay more for the GSA resources,
3 they'd actually be receiving an inferior product in
4 return. Under CPRE they'd pay "x" price, get fully
5 dispatchable renewable resources, and under GSA they'd be
6 forced to pay "x" plus additional amount, and they would
7 not have the renewable resource or renewable attributes
8 of those resources, and there wouldn't be the value of
9 having a fully dispatchable controlled facility. So from
10 our perspective, again, customers are not held neutral if
11 they're forced to pay more for a resource that is
12 inferior in quality to the CPRE resource.

13 So in conclusion, Duke respectfully requests
14 that the Commission approve the Company's application, as
15 updated in the Company's reply comments and as further
16 modified by inclusion of the two additional self-supply
17 options that we've described here today, including the
18 Wal-Mart settlement and the five-year avoided cost option
19 that I described. Compensation to the GSA Program should
20 not be based on a long-term avoided cost as such outcome
21 would run contrary to the policy direction of this state
22 and disadvantage non-participating customers by shifting
23 substantial cost from participating customers to non-
24 participating customers. That concludes my comments.

1 COMMISSIONER BROWN-BLAND: Mr. Jirak, I have a
2 question about early on when you began and you were
3 talking about a risk of overpayment to the non-
4 participating customer, I believe.

5 MR. JIRAK: Yes, Commissioner Brown-Bland.

6 COMMISSIONER BROWN-BLAND: If the cost of the
7 PPA is passed along to the participating customer, how is
8 that a risk of overpayment?

9 MR. JIRAK: Because under the Intervenor
10 recommendation, the cost -- the cost of the PPA would not
11 be -- the full cost of the PPA would not be passed on to
12 participating customers. What the recommendation was is
13 that the customer -- the participating customer would pay
14 the negotiated rate, let's assume that's \$40, but they
15 would get a bill credit at a higher rate, \$55, so they're
16 -- they would not be covering the full cost of that
17 megawatt hour once you net out all the transactions of
18 the GSA arrangement.

19 COMMISSIONER BROWN-BLAND: Isn't the -- but is
20 there a real cost there? Isn't there an equality between
21 the cost that Duke actually avoided? Isn't that what
22 we're talking about? Does Duke --

23 MR. JIRAK: If you could rephrase your
24 question.

1 COMMISSIONER BROWN-BLAND: Well, Duke -- the
2 credit you're talking about is equal to the cost as
3 avoided by Duke, right?

4 MR. JIRAK: That's correct.

5 COMMISSIONER BROWN-BLAND: So how is that a
6 real cost?

7 MR. JIRAK: Well, if you keep in mind under the
8 GSA Program, the customers pay their full retail charges,
9 and this is sort of an additional thing, and the GSA
10 resources are system assets, so if these resources -- if
11 the GSA resources are not there, there would be another
12 generating resource turning on and providing that energy
13 and there's a cost to that, and all customers would bear
14 that cost. And the same thing is happening here, except
15 you're replacing -- you're replacing the system asset
16 with a GSA asset for that last megawatt hour of energy,
17 and so there's still a cost to be borne; it's just who
18 appropriately bears that cost and what do you pay for
19 that megawatt hour of energy.

20 COMMISSIONER BROWN-BLAND: Thank you.

21 CHAIRMAN FINLEY: Commissioner Mitchell.

22 COMMISSIONER MITCHELL: Mr. Jirak, just one
23 question for you. The -- with respect to the settlement
24 with Wal-Mart, the -- can you explain or can you describe

1 to me just so I can understand the capacity charges? And
2 I understand that they're calculated differently for each
3 of the two utilities, but if we are assuming that the
4 supplier is a solar facility without any sort of battery
5 storage involved, is there a time at which that facility
6 is going to earn the capacity credit? In other words, is
7 the solar generator going to be putting at a time when
8 it's -- when the capacity credit would be available?

9 MR. JIRAK: I think it's all about what you
10 forecast in terms of the output of the facility and how
11 it lines up with the peak demand on the system, so I
12 don't know that I can answer that question definitively,
13 but I -- you know, to the extent -- to the extent that
14 the solar resource does align in terms of production with
15 the peak -- with some of the peak hours -- I know it
16 doesn't fully align, but to the extent it does, it would
17 be provided some capacity payment potentially depending
18 on what the reserve margin is in those particular hours.

19 COMMISSIONER MITCHELL: Understood. And I -- I
20 get that basic point, but given what you know about --
21 given what you know about the system generation, I mean,
22 are there -- is it likely that a solar facility with no
23 battery would earn a capacity charge?

24 MR. JIRAK: Yeah. I'd have to check with our

1 business folks in terms of what projections they would
2 make about future marginal costs and lining up with, you
3 know, a projected output for a solar facility, but I can
4 certainly get that information for you.

5 COMMISSIONER MITCHELL: Okay. Thank you.

6 CHAIRMAN FINLEY: Thank you, sir.

7 MR. JIRAK: Thank you.

8 CHAIRMAN FINLEY: Wal-Mart?

9 MS. HARRIS: Good afternoon. My name is Carrie
10 Harris with Spilman Thomas & Battle on behalf of Wal-
11 Mart. I don't have many planned comments, but I noticed
12 that many of you have some questions about the
13 stipulation. To the extent I can help answer those, I'm
14 happy to do so.

15 Obviously, as you know, Wal-Mart intervened --

16 CHAIRMAN FINLEY: Mr. Jirak can't answer them
17 any differently than you would have. I guess that's
18 right.

19 MS. HARRIS: Obviously, Wal-Mart intervened in
20 these proceedings because we have significant interest in
21 renewable energy. As a company we have an aspirational
22 goal to be served 100 percent by renewable resources and
23 a short-term goal to be served 50 percent by renewable
24 resources by 2025.

1 At the same time, those renewable energy goals
2 have to be balanced against our business needs. So to be
3 completely honest with you all, Wal-Mart, as a general
4 premise, does not enter into programs that are merely
5 cost additive. I think that that's reflected in the
6 comments that were filed initially in this docket, where
7 Wal-Mart actually said that it did not support the GSA as
8 originally proposed by the Companies, in part, because we
9 don't believe that it provided the value that we think a
10 customer expects when procuring renewable resources. And
11 that is the backdrop that led to our negotiations with
12 the Company and that ultimately produced the stipulation
13 that was filed with the Commission on August 16th.

14 In our experience as a large customer with
15 operations throughout the United States, we have
16 experience with multiple different ways to structure and
17 provide renewable energy, sometimes in a competitive
18 market, sometimes through the utility, and I think that
19 we brought that experience to bear in negotiating the
20 agreement and stipulation that you have today.

21 From Wal-Mart's perspective, we see the value
22 in the stipulation being in where the emphasis is placed
23 in the contracting process. We believe that we have a
24 lot of internal knowledge, experience, and expertise that

1 we bring to bear in the negotiation process. As Mr.
2 Jirak indicated, he provided -- the Company provided one
3 year of historical data that we used to model what we
4 believed we would see on a forward looking basis. And
5 through that modeling we believe that using this hourly
6 Lambda process provides us the opportunity, not a
7 guarantee, but an opportunity to see a benefit and
8 potentially a bill credit, and I think that's actually
9 really important.

10 I actually do work for Wal-Mart in a number of
11 states, and they are one of the few clients that I see
12 who would actually take a position that is we don't want
13 to do that even if it benefits us because it results in a
14 subsidy. And so that's how Wal-Mart feels about programs
15 where there is guaranteed cost savings because inevitably
16 if there is guaranteed cost savings, someone ends up
17 paying a subsidy.

18 Rather, Wal-Mart wants to use its expertise and
19 experience to negotiate a contract that it thinks is
20 fair, and based upon the modeling that it has done it
21 believes will provide it that opportunity to earn a
22 credit in the future. So I think that that's really
23 important to sort of understand as a backdrop for the
24 program.

1 And I just want to go back to a couple of the
2 questions that I felt like I heard. And I have here -- I
3 only have 10 copies. I will pass them out just so that
4 everybody has them, but they are the triangle that was
5 passed out previously, so I think most of the Intervenors
6 already have them, but I just think this is helpful to
7 explain how we believe the program works. And this
8 document was created by Steve Chriss, the Director of
9 Regulatory Affairs for Wal-Mart, so I take no credit nor
10 blame.

11 I think that what you saw with Mr. Jirak's
12 chart here is really why we believe that use of the day-
13 ahead Lambda is so important. It's not surprising that
14 the longer you ask an entity to enter into a contract,
15 the higher the cost is for that contract, but the
16 shorter, the price is lower. So what we see here isn't
17 that there's greater risk in the long term; it's that all
18 of the risk is at the front end to ensure that you do
19 your modeling and that you really work to develop a
20 contract that you think makes sense in the long term.

21 But in our experience, when you have contracts
22 that are fixed over a long period of time, what we find
23 is the potential for profit in favor of the customer is
24 less, because if a -- if a generator is going to know

1 that the avoided cost for 20 years is, for example, \$55,
2 then they agree to provide it to you at 54. What that
3 doesn't allow for is innovation. It doesn't allow for
4 improvements in the system, whereas the stipulation that
5 you have before you today does allow for that because the
6 avoided cost is always going to account for the best
7 information and data that's available. The only thing
8 that matters in terms of approving it from a customer
9 perspective is can we negotiate a number that is going to
10 best encapsulate that.

11 We think this stipulation does that and, quite
12 frankly, to the extent it would not have provided us with
13 the opportunity to save cost, we would not have entered
14 into it. So I think what I would say is that I believe
15 that Wal-Mart's willingness to enter into a stipulation
16 and to be the only party to enter into that stipulation
17 is reflective of our analysis as a large customer and our
18 analysis as a customer with significant renewable energy
19 goals who also believes that it's important to try to
20 generate cost savings in entering into renewable energy
21 projects.

22 That's the extent of my comments, but to the
23 extent I can answer any questions, I'm happy to do so.

24 COMMISSIONER CLODFELTER: Does Wal-Mart or

1 Sam's East participate in Georgia Power's Ready Program?

2 MS. HARRIS: It is my understanding that did.

3 It is my understanding that, in part, we were supportive
4 of using the Georgia Power mechanism here. I will say
5 that that structure and our willingness to agree to it
6 was something that does not come from my side of the
7 lawyer aisle, but from our internal experts, including
8 Steve Chriss and his department.

9 COMMISSIONER CLODFELTER: Well, given what you
10 do know in your -- your piece of the puzzle, can you
11 answer the question about why the difference between
12 look-back and look-ahead for the marginal energy charge?

13 MS. HARRIS: My best answer to that, subject to
14 check, is that I really think that from Wal-Mart's
15 perspective, the cost of renewable energy and the cost of
16 energy are going down over time, and so -- but, again,
17 they want to look forward and they want to pay actual
18 cost on a going-forward basis and that they think that
19 day-ahead number is best estimate as opposed to a
20 historical look-back number.

21 COMMISSIONER CLODFELTER: So you operate in a
22 number of states, and there would be an opportunity for
23 you, I suppose, or there might be an opportunity for you,
24 I suppose, to go to a renewable supplier and offer

1 aggregated demand that would enable that supplier to
2 build a much, much larger generation facility.

3 MS. HARRIS: That's correct.

4 COMMISSIONER CLODFELTER: And perhaps lower
5 costs. And that would be an advantage to the supplier
6 and to you.

7 MS. HARRIS: Yes.

8 COMMISSIONER CLODFELTER: One of the features
9 that is in the proposed program, however, is that the
10 facilities must all be located within the Utility's
11 territory.

12 MS. HARRIS: Yes.

13 COMMISSIONER CLODFELTER: That might make it
14 harder for you to aggregate your demand and negotiate
15 with someone who wants to build a facility, say, in
16 Tennessee, you know, a 500 megawatt facility in Tennessee
17 and then supply Wal-Mart stores all throughout North and
18 South Carolina and Tennessee and parts of Georgia,
19 because the facility has to be located in DEP's or DEC's
20 territory.

21 MS. HARRIS: Absolutely.

22 COMMISSIONER CLODFELTER: Is that something you
23 discussed with the Company?

24 MS. HARRIS: Quite frankly, we understand that

1 not only would we be required to locate resources within
2 the state, but that it may also obligate us to actually
3 locate multiple resources within the state to account for
4 the fact that Duke Energy Carolinas and Duke Energy
5 Progress might not even permit a singular facility that
6 would be used for both territories. Quite frankly, we
7 have relatively significant operations. There are 218
8 total stores, four distribution centers, and then as
9 between the two, you have more than 60 in one and 80 in
10 another, so we have fairly significant operations within
11 the state.

12 COMMISSIONER CLODFELTER: You're large enough
13 and your operations are dispersed enough to where my
14 scenario doesn't come into play --

15 MS. HARRIS: Well, I'm not --

16 COMMISSIONER CLODFELTER: -- for you.

17 MS. HARRIS: -- I'm not going to say that it
18 wouldn't come into play because, quite certainly, the
19 ability to leverage scale is always a benefit --

20 COMMISSIONER CLODFELTER: Right.

21 MS. HARRIS: -- to an entity, but at the same
22 time we still come before this Commission understanding
23 the limitations of the law as they're presented and still
24 believe that they present a value to customers in a

1 situation such as Wal-Mart.

2 COMMISSIONER CLODFELTER: Thank you.

3 MS. HARRIS: Thank you.

4 CHAIRMAN FINLEY: Thank you, Ms. Harris.

5 MS. HARRIS: Thank you.

6 CHAIRMAN FINLEY: UNC?

7 MR. STYERS: Mr. Chairman, members of the
8 Commission, as I introduced myself earlier, my name is
9 Gray Styers. It is my privilege today to appear before
10 you on behalf of my law school alma mater, the University
11 of North Carolina at Chapel Hill.

12 I'd also like to introduce to you today Mr.
13 Brad Ives who is here. Mr. Ives is the Associate Vice
14 Chancellor of Campus Enterprises and the Chief
15 Sustainability Officer for the University of North
16 Carolina, and his presence underscores the importance of
17 this issue to the University.

18 House Bill 589, Section III, creates General
19 Statute 62-159.2, and that section part is entitled
20 Renewable Energy Procurement for Major Military
21 Installations, Public Universities, and Other Large
22 Customers. Both the intent and the express language of
23 the bill and of 62-159.2 was to create a mechanism for
24 renewable energy procurement by customers, including

1 specifically the University of North Carolina at Chapel
2 Hill, the Department of Defense, which are specifically
3 named in that legislation.

4 Parenthetically, at this point I'd to add the
5 Department of Defense, who is not here today, wishes that
6 it could have been and is the other named customer in
7 that statute, and they have expressly authorized me to
8 communicate its alignment with the University's position
9 about the attractiveness and workability of Duke's GSA
10 Program as proposed.

11 The question before you today is whether Duke's
12 proposed program fulfills the legislative intent and the
13 language of House Bill 589 codified at 62-159.2. The
14 University of North Carolina at Chapel Hill is
15 participating in this hearing to clearly, unequivocally
16 state that it does not believe, and that the Department
17 of Defense in its written comments are clear as well,
18 that the program must be -- does comply and therefore
19 believes that the program must be redesigned to meet its
20 intended purpose in the language of the statute with your
21 guidance and direction in this docket.

22 CHAIRMAN FINLEY: What language in the statute
23 are you specifically referring to, Mr. Styers?

24 MR. STYERS: Well, to the -- and we'll talk

1 more about the bill credit specifically and the
2 calculation of the bill credit as avoided co--- as the
3 true actual avoided cost. That's the primary point that
4 I'll talk about later. We'll also talk about the
5 feasibility of the program as it would be used by the
6 Department of Defense and the University of North
7 Carolina at Chapel Hill.

8 As a preface to my remarks today, I would like
9 to respond to one thing Mr. Jirak has said and note that,
10 you know, not only is the University the named intended
11 beneficiary customer under the statute, but the
12 University of North Carolina Chapel Hill, we believe, is
13 also one of the largest customers of Duke Energy
14 Carolinas with a meter or multiple meters on adjacent
15 contiguous property.

16 Last year it used over 290 million kilowatt
17 hours of electric power, and yet as Duke was designing
18 this program that it filed in January 23rd of this year,
19 not once did it reach out to UNC to inquire about how
20 Duke's program could be structured in a way that would be
21 beneficial and utilized by the University.

22 After UNC intervened and expressed its concern
23 about the initial program proposed, not once did Duke
24 reach out to inquire how those concerns might be

1 addressed. After today's hearing was scheduled and as
2 Duke was in the process of negotiating an agreement and
3 stipulation with Wal-Mart, Mr. Ives was in meetings with
4 senior Duke management on two occasions and not once did
5 Duke mention the possibility of settlement discussions
6 until after the Wal-Mart settlement had been filed less
7 than two weeks ago.

8 Since then UNC has talked with Duke personnel,
9 we have signed an NDA, and we've looked at the Wal-Mart
10 settlement closely. But the reality is that UNC, as a
11 public university, situated where we are with the low
12 profile we have, the tariff structure we have and the
13 generation we currently have and the legal status and
14 constraints we have is in a very different position than
15 Wal-Mart. We do not see a benefit. We are glad that
16 Wal-Mart does, but, thus, we find ourselves at this
17 hearing today.

18 First, I'd like to discuss the legal status and
19 constraints creating the context for our position. First
20 principles guiding the University's decisions can be
21 found in no less than the North Carolina State
22 Constitution, Article IX. Article IX, Section 8, creates
23 the University of North Carolina. Article IX, Section 9,
24 states, "The General Assembly shall provide that the

1 benefits of the University of North Carolina" -- "as far
2 as practicable, be extended to the people of the State
3 free of expense."

4 The leadership of the University, Mr. Ives and
5 others, recognize that their budget consists largely of
6 public taxpayer provided funds and student tuition. They
7 understand the responsibility and stewardship entrusted
8 to them to spend these funds wisely and according to the
9 constitutional mandate to provide higher education, as
10 far as practicable, free of expense or, in other words,
11 as cost effectively as possible.

12 The General Assembly presumably, in enacting
13 Section III of House Bill 589 to create a program
14 specifically for the University to procure renewable
15 energy did so consistent with this provision of the
16 Constitution, not to increase the University's cost of
17 providing energy used to educate its students.

18 A false premise that underlies some of the
19 arguments that have been made that you may hear today is
20 that the procurement of energy supply and capacity is a
21 zero sum gain, that the decrease of energy supply cost to
22 some customers necessitates the increase of energy supply
23 cost to others, but it's simply not true and should not
24 be the starting point of the analysis in this docket.

1 As new technology becomes commercially viable,
2 as innovation occurs, as new supply become available,
3 customers should be allowed and perhaps incentivized,
4 especially public customers like the University and the
5 military, to be innovative, to find new customized
6 solutions that meet their needs at a lower cost, without
7 changing Duke's cost structure, provide energy to other
8 customers.

9 Let me be perfectly clear on this last point.
10 We readily acknowledge and support the principle
11 expressly stated in the statute that "All other customers
12 are to be held neutral, neither advantaged nor
13 disadvantaged, from the impact of the renewable
14 electricity procured on behalf of the program customer."
15 We do not and could not and would not advocate for any
16 program or bill credit that would increase cost to other
17 customers.

18 But so long as the bill credit is equivalent to
19 the University's -- to the Utility's -- excuse me --
20 equivalent to the Utility's full actual cost avoided, and
21 I think this may have been the point that Commissioner
22 Brown-Bland was -- pointed out, as long as it's
23 equivalent to the Utility's full cost avoided by not
24 having to provide the electrons and capacity to serve a

1 customer such as the University, then the program should
2 not create additional cost to non-participating
3 customers.

4 CHAIRMAN FINLEY: So you identify avoided cost
5 in the statute to be administratively what it cost as
6 PURPA requires and this Commission has implemented in its
7 E-100 dockets?

8 MR. STYERS: That is a calculation of avoided
9 cost under PURPA in this docket.

10 CHAIRMAN FINLEY: You're talking about a
11 theoretical way to determine avoided cost?

12 MR. STYERS: Yeah. Now, the first big issue
13 here is the calculation of the bill credit, and as you
14 pointed out, Chairman, now, we strongly believe that in
15 order not to disadvantage participating or non-
16 participating customers, conceptually the bill credit
17 should be as close as practical to avoided cost which
18 then leads to the question what is that avoided cost.

19 I'd like to point a few -- point out a few
20 points, sections to this statute. First, House Bill 589
21 expressly allows UNC to select the new renewable energy
22 facility from which the energy public utility -- electric
23 public utility shall procure energy and capacity.

24 Also, section (e) of the statute discusses the

1 billing mechanism and refers to energy and capacity
2 procured by and provided by the electric public utility
3 for the benefit of the program customer. Conceptually --
4 and, again, I'm answering your question here --
5 conceptually, if UNC makes arrangements to purchase its
6 energy and capacity from a renewable resource so that
7 Duke does not have to, one, provide those electrons and,
8 two, or bring another generation source from the stack
9 online, then UNC should get a bill credit and the other
10 customers, participating customers, should receive a bill
11 credit for both that energy and capacity representing
12 Duke's actual avoided cost.

13 So conceptually, you know, you have calculated
14 the administrative avoided cost and the PPA, that is
15 obviously a projection of avoided cost. Conceptually,
16 the bill credit works if it includes, we believe, both
17 energy and capacity.

18 Now, Ms. Mitchell asked the question earlier
19 regarding the calculation, and we're in the Duke Energy
20 Carolinas service territory, of the -- calculation of the
21 hourly rate in the Wal-Mart settlement, and there's a
22 discussion of rationing charge, marginal capacity cost
23 during hours with generation constraint. Now, we did
24 look at the historic hourly data. We also looked at our

1 own demand-side management and our own resources and did
2 not see a benefit and did not see that there would be a
3 capacity -- that the rationing charge, which we weren't
4 sure, quite frankly, how transparent that would be
5 anyway, we saw that would rarely ever come into play for
6 UNC in our analysis.

7 So as a practical matter, we did not see the
8 calculation in the Wal-Mart settlement would provide for
9 the capacity component of actual avoided cost that would
10 be -- should be part of the bill credit.

11 CHAIRMAN FINLEY: Let me ask you this, Mr.
12 Styers. I mean, avoided cost is referenced in the
13 statute, but the way I read the statute, it's talking
14 about a ceiling, avoid cost is the ceiling. Are you
15 saying that that's the floor?

16 MR. STYERS: No. I'm not saying it's a floor,
17 and I want to make sure I'm clear about that, that it is
18 the -- it is the target. It is, you know, what makes the
19 syst--- what will make this program work is what we
20 should be shooting for in the bill credit. Now, it
21 cannot exceed -- the statute is clear. It does say that
22 it shall not exceed the avoided cost, but it should be as
23 close to avoided cost energy and capacity as practicable.
24 The day-ahead --

1 CHAIRMAN FINLEY: Where does it say as close as
2 it can be? Where does the statute say that it's close as
3 it can be?

4 MR. STYERS: No, no. The statute -- no. The
5 statute says it shall not exceed avoided cost, but as a
6 conceptual matter how the program could work would be if
7 the avoided cost is, in fact, the bill credit because
8 that, in fact, corresponds with the cost avoided, the
9 amount not having to be paid by Duke, so there is not --
10 it has to be read in relationship to the concept of
11 customers not being advantaged or disadvantaged.

12 To the extent that it doesn't track the avoided
13 cost, then there would be customers that would be
14 advantaged or disadvantaged. So to fulfill the principle
15 of not disadvantaging customers, participating or non-
16 participating, is why avoided cost is the proper bill
17 credit amount.

18 And, again, in an ideal world, here we're
19 working with projections, we're looking at future
20 assumptions, we're looking at a lot of data, but that is
21 how the -- the bill credit mechanism in subsection (e)
22 and the concept of trying to make sure that there are no
23 customers advantaged or disadvantaged actually comes into
24 place if we -- if it is at avoided cost.

1 The day-ahead hourly calculations of the Wal-
2 Mart settlement entails considerable risk which I'll
3 discuss in a few moments, and also we believe, as I
4 mentioned earlier, appears to be roughly equivalent to an
5 energy-only, fuel-only cost and therefore is not
6 attractive to UNC.

7 In addition, I'll just note as an aside that if
8 solar and/or wind becomes major components of Duke's
9 generation, there could be little incremental fuel cost
10 for those resources on the margin, and the long-term
11 effect of greening Duke's generation fleet could be --
12 could drive down that incremental hourly rate, especially .
13 over a 15 or 20-year horizon of a PPA, which does lead me
14 to the second point I'd like to discuss, not only that
15 the bill credit should be the avoided cost, the actual
16 avoided cost savings that Duke realizes by not having to
17 provide the energy and capacity itself, but the second
18 issue is the need for long-term pricing structures.

19 The second issue arises for the need of the
20 University to manage its financial risks and budget its
21 expenses conservatively and with predictability. The
22 University, as a public entity entrusted with public
23 funds, cannot engage in speculation or hourly risk
24 taking. For GSA Programs to work, for this program to

1 work, it needs to provide a level of predictability both
2 for customers like UNC and the Department of Defense, as
3 well as for developers of generation facilities to make
4 necessary long-term capital commitments.

5 While UNC anticipates that it will be most
6 beneficial to enter into a GSA agreement with a renewable
7 resource for 15 or 20 years -- we think that is valuable
8 and that is what we will be looking for if we can -- we
9 recognize that the avoided cost pricing for that period
10 of time is very uncertain. We have no delusions about
11 that.

12 We believe that there could be a reasonable
13 reset period that provides the necessary budgetary
14 predictability to participating customers and suppliers,
15 but also fairly balances risks to the Utility and non-
16 participating customers. If the reset period is too
17 short, there is too much risk and uncertainty for UNC as
18 a public institution to participate. If it's too long,
19 the actual avoided cost and the bill credit could diverge
20 considerably, to the extent I've already answered the
21 Chairman's question by saying that is how the program
22 works.

23 There needs to be a balance of that time
24 period. There's no -- this actually doesn't say what

1 that balance is. It's not a lawful or unlawful
2 determination there. That is a policy determination for
3 this Commission.

4 But with regards to what would be attractive to
5 UNC to participate, UNC would be interested in a
6 structure whereby an avoided rate was set for 10 years
7 with a refresh or reset based upon actual avoided cost at
8 the 10-year mark for the next five years of the contract.
9 UNC understands that such a structure would be consistent
10 with the position of the Public Staff, as stated in its
11 reply comments.

12 In addition, we note our agreement with the
13 term in the Wal-Mart settlement that the GSA supplier
14 will transfer all RECs associated with the energy to the
15 applicable GSA customer. I don't think we're in any --
16 in conflict with Duke in that regard, but believe that
17 that could be and should be clarified in the description
18 of the program and the tariffs, that we did not believe
19 that the tariffs were clear regarding the RECs would be
20 provided to the supplier -- to the provider that's
21 associated with the energy.

22 I would also like to mention two other issues
23 that affect UNC's interest in participating in the GSA
24 Program, and they have already been touched on by Duke,

1 so will come as no surprise.

2 The first is the very broad scope of the
3 definition "control instructions" in the form PPA that
4 Duke filed last week that undergirds the curtailment
5 question. If a customer such as UNC enters into a GSA
6 supply contract with a supplier, it has a reasonable
7 expectation that the energy and capacity that it is
8 contracting for is, in fact, delivered to fulfill the
9 purpose of the contract and the statute.

10 Now, UNC certainly understands the need for
11 Duke to maintain balance on the grid and react to
12 emergency situations to maintain grid reliability, and
13 believes that Duke fully should have those rights of
14 curtailment. But Duke may well choose, for economic
15 reasons, to curtail or to dispatch down certain parts of
16 its own generation fleet as it deems to be in its best
17 interest, which may or may not align with the interest of
18 the GSA participating customers and suppliers and the
19 contract that they've negotiated. And this is
20 underscored by the structure of House Bill 589, as noted
21 in the Public Staff's comments, initial comments, on page
22 6 and 13 through 14.

23 Structurally, Section 62-110.8(b)(3) regarding
24 the competitive procurement expressly acknowledges in the

1 context of the CPRE program that the Utilities will have
2 the right to dispatch renewable energy facilities in the
3 same manner as their own resources. But in contrast, the
4 GSA Program 62-159.2 does not include that same language.
5 The Legislature certainly could have. It certainly
6 clearly did so in the competitive procurement section of
7 the bill. So, therefore, while the curtailment or
8 control instructions may be appropriate in the CPRE PPA,
9 as authorized by the statute, the GSA PPA should not
10 mirror those exact same dispatch rights as Duke proposes.

11 Therefore, we believe that the definition of
12 "control instructions" in Sections 8.6, 8.8, and 8.9 of
13 the form GSA PPA that Duke filed last week should be more
14 narrowly tailored to address only operational needs and
15 not to provide unfettered discretion for economic
16 dispatch. In this regard we support the points made by
17 the Public Staff in their initial comments.

18 The last issue I will mention is Duke's
19 proposed allocation of available suppliers to GSA
20 customers between DEP and DEC and the resulting
21 limitations on the GSA customer to only purchase from
22 resources in the retail utility service area in which it
23 is located.

24 Follow-up Commissioner Clodfelter's questions

1 to the counsel from Wal-Mart, the University of North
2 Carolina at Chapel Hill only has one campus. Now, there
3 are other constituent institutions of the university
4 system, but, you know, we would only have one campus at
5 one location.

6 And what if we could partner with -- and we're
7 in the DEC territory, but what if we could partner with
8 East Carolina or NC State, not too far away, which is
9 located in the DEP territory, and work together. Again,
10 UNC recognizes the potential that transmission
11 constraints could limit its option of suppliers. That
12 reality is readily recognized. But given UNC-Chapel
13 Hill's campus near the boundary of the two Utilities and
14 the joint dispatch rights of the two Utilities, this
15 limitation to us seems arbitrary, artificial, and not
16 found in the statute.

17 The legislation provides no territory
18 limitation on the supplier selected by a GSA customer to
19 provide its renewable energy capacity. If GSA parties
20 such as UNC can make arrangements for necessary
21 transmission capacity -- that's an if -- but if the GSA
22 parties can make arrangements for necessary transmission
23 capacity, a customer like UNC should be able to enter
24 into contracts with GSA suppliers outside the serving

1 retail Utility service territory. We're not located
2 everywhere. We don't have multiple facilities. We don't
3 have that flexibility as Wal-Mart does.

4 In conclusion, I'll note that UNC, as an
5 educational institution and not a utility, is not an
6 expert in designing energy supply programs. We don't
7 have all the answers. UNC simply wants a program that
8 allows it do what the Legislature intended to accomplish
9 -- to accomplish in enacting House Bill 589. UNC, as
10 previously stated, is unique and different, but perhaps
11 most of the customers who have intervened in this docket
12 and who would like to participate in this program, the
13 Department of Defense, Wal-Mart, Google, Apple, would
14 probably say the same thing, that they are unique. This
15 underscores the need to provide a range of options, a
16 range of terms, a range of solutions that would fit.
17 Wal-Mart's solution fits Wal-Mart.

18 Finally, we want to emphasize that as the
19 Legislature intended to allow in enacting the statute, we
20 see very real benefits to the University procuring
21 renewable power, but the University does not have the
22 land to build facilities to be carbon neutral like the
23 aspirations and goals of Google and Apple. We don't have
24 the land to be self-sufficient and resilient, as the

1 Department of Defense states in its comments on its
2 objectives, and has a long track record of building large
3 facilities on its own base properties.

4 UNC has to work with Duke through the structure
5 of this GSA Program. We don't have any other choice but
6 to be here and to work with our electric utility to try
7 to find a solution. We believe that a program can be
8 designed and implemented as the Legislature intended to
9 provide the University with cost effective means of
10 procuring renewable energy. With a bill credit roughly
11 equivalent to the Utility's actual costs that are
12 avoided, both energy and capacity, so that non-
13 participating customers are not disadvantaged and over a
14 term that fairly balances the interest of the parties and
15 allow the University to budget and manage risks.

16 The program, as proposed by Duke, however, does
17 not accomplish those objectives for the University. It
18 is not a program attractive to the University or to the
19 Department of Defense, the two named customers the
20 Legislature intended to benefit. As such, as proposed,
21 it cannot be the program envisioned by the General
22 Assembly and therefore should not be approved by the
23 Commission as proposed.

24 Be happy to answer any questions to the best of

1 my ability.

2 CHAIRMAN FINLEY: Mr. Styers, you expressed
3 some disappointment that the University didn't come to
4 you -- I mean, that Duke didn't come to you to enter into
5 a settlement discussion, but I understand that you are
6 talking with them now; is that right?

7 MR. STYERS: We did have some discussions in
8 the last 12 days. We have looked specifically at whether
9 the Wal-Mart structured settlement would work for the
10 University --

11 CHAIRMAN FINLEY: I don't want you to get into
12 it.

13 MR. STYERS: -- and concluded it did not.

14 CHAIRMAN FINLEY: I don't want you to get into
15 it.

16 MR. STYERS: So we have not at this point, Mr.
17 Chairman.

18 CHAIRMAN FINLEY: Well, I'll invite you to come
19 talk to them. How about that?

20 MR. STYERS: We remain open.

21 CHAIRMAN FINLEY: That will do. You all get
22 together and talk. I think that would be helpful.

23 MR. STYERS: We remain open and would be
24 delighted to do so.

1 COMMISSIONER CLODFELTER: Mr. Styers, on the
2 point you make about the provisions in the proposed PPA
3 with respect dispatch control, if we agree with your
4 position on that, and that is the position of several of
5 the other Intervenors -- I'm going to ask you the
6 question, but they may want to -- others may want to
7 address it, too --

8 MR. STYERS: I may punt, but go right ahead.

9 COMMISSIONER CLODFELTER: That's fine. I'll
10 get the question out there and then whoever wants to take
11 it. The statute says that we have to ensure that all
12 customers are held neutral from the impact of the
13 electricity. Doesn't just say from the cost. It says
14 from the impact of the electricity. Do you think -- do
15 you think depriving Duke of dispatch control over these
16 facilities runs some risk of violating that statutory
17 mandate?

18 MR. STYERS: That's a good question, and I
19 would say --

20 COMMISSIONER CLODFELTER: If you don't want to
21 answer, someone else may want to address it.

22 MR. STYERS: Well, I will give an inadequate
23 and incomplete answer and let my colleagues correct me
24 and/or give you a more complete answer.

1 But so long as transmission is available, so
2 long as there are no constraints, so long as the delivery
3 of that energy and capacity, you know, does not adversely
4 affect the operational needs of the system, then the non-
5 participating customers are not disadvantaged. Now, it
6 may be -- you know, I said earlier about how it's not a
7 zero sum gain? There may be ways that, you know, it is
8 advantageous to the University and to other customers,
9 but so long as there are no operational concerns, and if
10 there are then Duke has those curtailment rights, but so
11 long as there are no operational constraints that
12 adversely affect other customers, then I would propose
13 that they are not disadvantaged and that would not be
14 violative of the directive in the statute.

15 COMMISSIONER CLODFELTER: I'm going to ask you
16 a second question that I probably should have asked Duke,
17 but I didn't think of it until now. So, again, I ask it
18 of you to get it out there, more than any other purpose,
19 so that I don't forget it. And then if Duke wants to
20 take it up and address it at some later point, they can,
21 but it's probably a question for everyone.

22 So we now have -- and we're going to hear more
23 people, I think, who agree with your position later, but
24 we now have your position that the bill credit needs to

1 be -- needs to work off of administratively determined
2 avoided cost.

3 MR. STYERS: Yes.

4 COMMISSIONER CLODFELTER: And then we tweak
5 that some as to what period we used, so forth and so on.
6 And then we have -- in the Wal-Mart settlement we have a
7 construction of the statutory term avoided cost that
8 really use short-term -- what I call short-term marginal
9 cost, day-ahead -- day-ahead pricing. I've got to be
10 sure -- if we set up a program that has both of those
11 options in it hypothetically, we've got to be sure that
12 there is never going to be a situation in which the day-
13 ahead hourly forecast is going to be greater than the
14 administratively determined long-term avoided cost or
15 vice versa. I can't have inconsistent concepts of
16 avoided cost in this program. The two have to sync at
17 some point. And I'm not sure I'm articulating the
18 question very clearly, but it can't -- avoided cost can't
19 mean two different things.

20 MR. STYERS: I --

21 COMMISSIONER CLODFELTER: You could have
22 different programs that are accommodated under the
23 statute so long as there is never a situation in which --
24 whichever one you say is the correct interpretation.

1 MR. STYERS: But with an alternative program.

2 COMMISSIONER CLODFELTER: With such -- am I
3 getting that across clearly?

4 MR. STYERS: With some trepidation, perhaps
5 not, because I don't know if I --

6 COMMISSIONER CLODFELTER: Okay.

7 MR. STYERS: -- disagree with -- I don't know
8 if I agree with you, Commissioner.

9 COMMISSIONER CLODFELTER: Okay. How can it
10 mean two different things?

11 MR. STYERS: Because we have two different time
12 horizons. We have -- we're looking -- we're looking at,
13 you know -- because over the long run, you know, they may
14 be -- they may be equivalent --

15 COMMISSIONER CLODFELTER: Let's --

16 MR. STYERS: -- even if they vary in the short
17 run.

18 COMMISSIONER CLODFELTER: Let me clarify.
19 Let's say I -- let's say we go with your position that
20 the statute's use of the phrase "avoided cost" means the
21 long -- the administratively determined avoided cost. If
22 I then want to accommodate the Wal-Mart settlement as
23 part of the program under the statute, I have to be
24 assured that there will not be instances under the Wal-

1 Mart option in which the day-ahead hourly forecast is
2 going to -- cost is going to exceed the administratively
3 determined long-term avoided cost.

4 On the other hand, if I say that I believe
5 avoided cost in the statute means the concept of hourly
6 rate as embodied in the Wal-Mart settlement and then I
7 want to give you an option to negotiate your
8 participation based upon administratively determined
9 avoided cost concepts, I then have to be sure that that
10 will never exceed the day-ahead hourly forecast.

11 You see the problem? The statute cannot
12 accommodate a situation which we end up violating that
13 cap on whatever we determine avoided cost to be. We
14 can't offer both options unless we're sure that there's
15 never going to be a situation which one is greater than
16 the one we've selected as the statutory interpretation
17 for the meaning of the phrase avoided cost. How do I do
18 that?

19 MR. STYERS: As Duke's example that they handed
20 out here today --

21 COMMISSIONER CLODFELTER: Yeah.

22 MR. STYERS: -- talked about sometimes, you
23 know, the day-ahead cost may be above the GSA, may be at
24 55 I think was their example.

1 COMMISSIONER CLODFELTER: May be above the
2 negotiated contract price.

3 MR. STYERS: Right. Maybe 55 one day, maybe 30
4 the next. Over the life of that contract you're going to
5 have days that are up and there are days that are down.
6 So I think you're looking at different time frames, and I
7 think over the life of the contract then it cannot be
8 above avoided cost.

9 COMMISSIONER CLODFELTER: You've just extended
10 the series of data points, but the question is still
11 there. So I now have an aggregate of data points over
12 the life of the contract. I still have the same
13 conceptual question. I've got a statutory mandate that
14 we cannot have a program in which the bill credit ever
15 exceeds whatever we decide statutorily avoided cost
16 means. And so if I want to offer again your option and
17 Wal-Mart's option, how do I be sure that we comply with
18 that statutory directive? That's the question, and I
19 don't need an answer from you anymore right now because
20 I've put you on the spot.

21 MR. STYERS: No. That's --

22 COMMISSIONER CLODFELTER: I didn't think of the
23 question when Duke was up here.

24 MR. STYERS: I will say that the statute does

1 not read shall not exceed Utility's avoided cost as
2 administratively determined by the Utilities Commission
3 in response to or consistent with the PURPA provisions.

4 COMMISSIONER CLODFELTER: It doesn't say that.

5 MR. STYERS: It does not say that.

6 COMMISSIONER CLODFELTER: So in other words,
7 I'm free to adopt Duke's interpretation of avoided cost
8 under the -- as embodied in the Wal-Mart settlement --

9 MR. STYERS: I --

10 COMMISSIONER CLODFELTER: -- as embodied in the
11 Wal-Mart settlement.

12 MR. STYERS: I would not argue against that.

13 COMMISSIONER CLODFELTER: Or I could adopt the
14 CPRE weighted average CPRE price.

15 MR. STYERS: If it were not reflective of
16 avoided cost, I would say it would not be consistent with
17 the intent and functionality of the statute, but to the
18 extent that I think you can -- you have the discretion in
19 your judgment to determine what is the avoided cost to
20 make this system -- make the program work and to ensure
21 that customers are not advantaged or disadvantaged.

22 COMMISSIONER CLODFELTER: Yeah. What I'm
23 struggling with here is the fact that we've got the same
24 phrase, the same English words "avoided cost" appearing

1 in statutes in multiple locations for multiple different
2 purposes --

3 MR. STYERS: Exactly.

4 COMMISSIONER CLODFELTER: -- and we've got
5 parties wanting to accommodate different interpretations
6 of that within the same statutory scheme. It's also used
7 in the competitive solicitation program because Duke
8 doesn't have to accept any bids that come in that are
9 greater than avoided cost. I have to know what avoided
10 cost means in that context as well. I've got the PURPA
11 avoided cost, and now we're talking today about what's in
12 this statute.

13 MR. STYERS: And I think it can be --

14 COMMISSIONER CLODFELTER: The issue I --

15 MR. STYERS: -- interpreted --

16 COMMISSIONER CLODFELTER: The issue I'm
17 surfacing here for really all the parties is whatever we
18 come out with here has got to be in a situation where
19 nobody says we violated that statute.

20 MR. STYERS: And I think even though they're
21 the same words, it is in different context with different
22 legislative intent and different purposes, I think that
23 you have the discretion and judgment to apply them in
24 different ways.

1 COMMISSIONER CLODFELTER: Yeah. I hope you're
2 right about that, but, again, when I'm in the context of
3 single statute and I want to offer multiple different
4 option programs, that's the trick. That's the -- that's
5 what surfaced the question. Thank you. I've done
6 enough. I -- again, you just happened to be there when I
7 thought of the question. I'm sorry.

8 MR. STYERS: That's fine.

9 CHAIRMAN FINLEY: All right, Mr. Styers.

10 MR. STYERS: Any other questions?

11 CHAIRMAN FINLEY: You better sit down while the
12 getting is good there. Mr. Trathen?

13 MR. TRATHEN: Thank you. Good afternoon.
14 Again, it's -- I'm Marcus Trathen here representing the
15 Tech Customer Intervenors Google and Apple.

16 We thought it was important for us to
17 participate in this proceeding to offer the unique
18 perspective of large users who are supportive of these
19 sort of procurement programs and have experience in North
20 Carolina with the prior pilot program and also with these
21 programs elsewhere.

22 We find ourselves in general agreement with the
23 legal analysis and broad business concerns articulated by
24 UNC in their arguments, so I will endeavor not to repeat

1 those, and that should truncate my remarks.

2 At the outset I would like to maybe state the
3 obvious, which is my clients are proponents of renewable
4 energy. They would like the ability to procure
5 renewables in DEC's territory where they have facilities,
6 and if there was a clear pathway to do that, we would be
7 actively pursuing those options.

8 My clients have certainly made public
9 commitments to achieve renewable energy goals, and so our
10 desire is to participate in this sort of program. And
11 certainly, as you're aware, the ability for large users
12 to procure clean energy resources is -- it's an ever-
13 increasing business concern, certainly for my clients as
14 with other large users. It's what our customers expect,
15 increasingly what the market expects, and it's consistent
16 with our notions of responsible corporate citizenship.
17 And decisions that we make about deployment of investment
18 in facilities, we'll take into consideration the
19 availability of these programs.

20 As I mentioned, we do have some experience with
21 this sort of program in North Carolina. Google
22 specifically was a participant in DEC's pilot Green
23 Tariff Program that was offered just a few years ago. We
24 would not describe that program as a success, although

1 we're certainly glad that DEC did that. The program was
2 undersubscribed. There were three customers at the time
3 of the final report in March 2017. The fourth was coming
4 online at that time. And the subscription was 20 percent
5 of the annual aggregate cap of that program.

6 In its final report, DEC noted that pricing is
7 the most significant reason why existing customers did
8 not contract for more capacity and the program did not
9 attract more customers. I think it's fair to ask Duke
10 whether or not their program that they propose here
11 proposes to improve that situation. Our perspective is
12 that it does not. It does not offer a more attractive
13 pricing proposition than the prior pilot program.

14 We sought to learn from participation in this
15 program. We participated -- I say we -- my client did,
16 in the stakeholder discussions leading to H 589, and so I
17 have to say it is disappointing that we are here opposing
18 the program that we helped to establish in 589. The
19 proposal that we saw put forward is not what we
20 envisioned coming out of that process and is not
21 something that we envision participating in as currently
22 configured.

23 I think, if I heard UNC correctly, like them,
24 we were not contacted by Duke in connection with the

1 drafting of this program, so we had no role -- post --
2 post statute we had no role in or input into the design
3 of the program, which is disappointing.

4 So, again, our broad concerns with the proposal
5 seem consistent with those which have been articulated by
6 UNC and Department of Defense who are named in the
7 statute. We believe that we were also intended
8 beneficiaries of this program, although we were not
9 named. We'll defer to those folks who've made more
10 extensive arguments in the record regarding the technical
11 deficiencies, but from our perspective, the basic premise
12 here is fairly simple, that the program is designed from
13 an economic point of view from the premise that large
14 users have the ability to enter into contracts for the
15 purchase of renewable energy at rates which are
16 potentially lower than the incremental cost of the
17 Utility's operations, and if we were able to do that,
18 then it holds out economic benefit for us as well as the
19 other benefits of procuring renewable energy that I've
20 discussed.

21 The central problem, which has already been
22 discussed quite a bit, is what Duke proposes to do is
23 siphon off the benefit if we're able to negotiate such an
24 arrangement. Duke is siphoning off that benefit for

1 whoever -- I can't really tell from the papers -- its
2 shareholders, its ratepayers, whomever, but that is
3 clearly its proposal and is the fundamental problem with
4 -- with what we're talking about today.

5 I do believe that it's fair to infer from the
6 structure of the statute that the General intent --
7 Assembly intended to establish a program that would be
8 successful, subscribed to by customers such as my client,
9 and that be successful, particularly in light of the lack
10 of success with the pilot program. And we also believe
11 that it's fair to infer that the General Assembly
12 intended that the program would result in tangible
13 benefits for the intended and named beneficiaries of the
14 program, while at the same time holding Duke and the non-
15 participating customers harmless, which we also agree is
16 a fundamental principle of these programs.

17 I think with regards to the statutory
18 construction, the word negotiation, the ability of the
19 purchase -- the customer to negotiate contracts is
20 critical to understanding. I don't know why the General
21 Assembly would have created a program that allowed us to
22 negotiate if it intended that Duke was going to siphon
23 off the benefits of that negotiation for its own use.

24 Duke does make a statutory construction

1 argument pointing to the language that the program should
2 not advantage -- should not disadvantage non-
3 participating customers, but the statute also says that
4 the program should not advantage non-participating
5 customers, but I think critically it is clear -- I agree
6 there's not a definition in the statute of avoided cost,
7 but it's clear from the statute that the use of avoided
8 cost is, when you call it backstop or whatever, it's
9 clear that the General Assembly believed that avoided
10 cost was an acceptable mechanism of -- that could be used
11 for allowing a credit for a customer under this program.

12 So clearly, the General Assembly believed that
13 the use of avoided cost was not inconsistent with the
14 requirement that the overall program doesn't advantage or
15 disadvantage non-participating customers.

16 So that is our broad view of the program. With
17 respect to some specifics, we did expect when Duke filed
18 its program that we would be able to at least review the
19 contractual provisions that we would be subject to and
20 which would govern the program and our relationship. The
21 statute does say that each public utility's program
22 application required by the section shall provide
23 standard terms and conditions for participating customers
24 and for renewable energy suppliers.

1 So we did envision that we would have an
2 opportunity to review these terms. I don't know that
3 we'll have comments on those. We may or we may not. But
4 it is important to understanding the entire program and
5 its impact on you to understand what the terms and
6 conditions are as well. Duke did not do that. We do
7 believe that we should have an opportunity to review
8 those contract terms and to offer comment as appropriate.

9 In addition, with respect to territorial issues
10 in addition to the point that has already been discussed,
11 my understanding is that Duke proposes to allocate
12 unreserved capacity under the program between DEC and DEP
13 based on essentially size of its territory. I don't find
14 a statutory basis for that. I understand that the
15 statutory -- that the statute provides for a combined 600
16 megawatts of total capacity subject to the program. I
17 don't see any authorization for Duke to divide that up in
18 its territory, and we would like the ability to fully
19 utilize unreserved capacity from whichever company we
20 would seek to participate with if we're able to do so.

21 In summary, my clients would like to
22 participate in this program. As structured, they do not
23 see that they can do that. A successful program needs to
24 be transparent, which this isn't with respect to pricing,

1 and the ability to lock in fixed pricing, the ability to
2 recognize economic benefits of the bargain. If you've
3 made a bargain, you should be able to realize that and
4 then manage contract risk.

5 So unfortunately, we do not believe that the
6 program, as designed, is consistent with the statute and
7 you should reject it as currently configured.

8 COMMISSIONER CLODFELTER: On the allocation
9 issue, is it your position, then, that first come/first
10 serve is really the rule?

11 MR. TRATHEN: Yes.

12 COMMISSIONER CLODFELTER: Anything else? Is
13 there any other option other than that one?

14 MR. TRATHEN: I don't know. We're happy to
15 discuss other options with Duke.

16 COMMISSIONER CLODFELTER: You don't have one to
17 propose today?

18 MR. TRATHEN: I do not.

19 COMMISSIONER CLODFELTER: I was just fishing.

20 MR. TRATHEN: Yeah.

21 COMMISSIONER CLODFELTER: Okay. Do you have
22 any comments on behalf of your clients on the option in
23 the Wal-Mart stipulation?

24 MR. TRATHEN: We don't believe that the Wal-

1 Mart stipulation works for us. We do not have access to
2 the data that has been provided to some parties, but
3 based on our analysis of what's been publicly released,
4 we just don't see that that's feasible for us.

5 COMMISSIONER CLODFELTER: I'm interested if you
6 did -- if your clients -- you can't answer for them
7 because they're not here and they haven't seen it, but if
8 your clients had had access to the same datasets that
9 Wal-Mart had made its determinations on, do you think
10 that would be interesting to know?

11 MR. TRATHEN: It would be interesting to know.
12 I don't think it would change our analysis of the overall
13 tariff, the overall proposal. One of the issues with
14 respect to essentially the Georgia proposal is -- my
15 understanding is that in Georgia my clients have the
16 opportunity to participate in the tariff, which is akin
17 to real-time pricing, and the tariff in North Carolina is
18 just not something -- it's very limited, it's for
19 incremental load, and so we're not able to benefit from
20 that. So the economic structure of the underlying tariff
21 is not something that really matches up for us with
22 respect to what Wal-Mart has negotiated, so, yeah, we
23 don't see that that benefits us.

24 CHAIRMAN FINLEY: Thank you, Mr. Trathen.

1 We're going to take a 10-minute break and come back at
2 4:00.

3 (Recess taken from 3:50 p.m. to 4:01 p.m.)

4 CHAIRMAN FINLEY: Let's have a seat, folks.

5 Ms. Kemerait?

6 MS. KEMERAIT: Good afternoon. Again, my name
7 is Karen Kemerait, and I'm an attorney with Smith Moore
8 Leatherwood in Raleigh, and I'm here on behalf of the
9 North Carolina Clean Energy Business Alliance. And with
10 me today are a number of members of the -- of NCCEBA, and
11 I would ask that you raise your hand, and they're here to
12 indicate to the Commission their interest in this docket
13 and in this proceeding.

14 NCCEBA, like many of the other Intervenors in
15 the Green Source Advantage docket, also participated in
16 the discussions and negotiations that led to the
17 enactment of House Bill 589. And NCCEBA, like one of the
18 other attorneys mentioned earlier, is disappointed that
19 we are here today asking that the Commission reject and
20 not approve the Green Source Advantage Program that has
21 been proposed by Duke, especially in light of all of the
22 effort, negotiations, and hard work that went into House
23 Bill 589, in particular, the GSA portion of House Bill
24 589.

1 At the time that House Bill 589 was
2 implemented, NCCEBA, along with many of the other large
3 electric customers, believed that we had a clear
4 understanding about what would be happening with the GSA
5 Program, and what we have found is that what has been
6 proposed does not meet what -- the express requirements
7 of House Bill 589 and also the intent of the bill.

8 So NCCEBA's interest in this proceeding is to
9 ensure that the Green Source Advantage Program complies
10 with the GSA statute, which is N.C.G.S. Section 62-159.2,
11 and also to ensure that it is a workable program that
12 will enable robust participation by the University of
13 North Carolina, the Department of Defense, and the other
14 large electric customers that seek to participate in the
15 program.

16 At NCCEBA we are concerned that the program has
17 such significant flaws, as written, that would -- that
18 those flaws would prote--- would prevent appropriate
19 participation and also the robust participation that was
20 contemplated and envisioned by the GSA statute.

21 And you've heard from representatives already
22 of the University of North Carolina, who was also -- Mr.
23 Styers was speaking on behalf of the Department of
24 Defense as well, along with some of the other attorneys

1 for the large electric customers. And they express
2 concerns that Duke's proposed GSA Program fails to comply
3 in several material ways with the requirements of 62-
4 159.2.

5 The greatest concern that you have had that
6 NCCEBA shares is with the proposed bill credit mechanism
7 for the self-supply option for the GSA Program. Mr.
8 Jirak stated in his opening remarks that the Intervenors
9 and the large electric customers are seeking what he
10 described as a guaranteed cost savings through the bill
11 credit mechanism. However, that is simply not accurate.
12 What the large customers are seeking is an opportunity
13 for cost savings through -- that would be possible
14 through an appropriate bill credit mechanism that would
15 be based upon the administratively established avoided
16 cost rates.

17 The customers have stated that the --

18 CHAIRMAN FINLEY: Does the statute require the
19 administratively determined avoided cost rates?

20 MS. KEMERAIT: The statute contemplates it and
21 envisions it.

22 CHAIRMAN FINLEY: But does it require it?

23 MS. KEMERAIT: It does not require it. The
24 statute does not require how the bill credit mechanism is

1 to implemented, but what the statute does specifically
2 refer to and contemplate is through the avoided cost
3 rate.

4 The customers have stated that this failure to
5 comply with the statute will create disincentives to
6 their participation through -- with --

7 CHAIRMAN FINLEY: But failure to comply with
8 the statute as interpreted? Is that what you say?

9 MS. KEMERAIT: Failure to comply with the
10 statute as interpreted and with the express language of
11 the statute.

12 CHAIRMAN FINLEY: What is that language,
13 please?

14 MS. KEMERAIT: For example, the bill credit
15 shall not exceed the Utility's avoided cost. And then
16 most specifically, subsection (e) states that "The
17 Commission shall ensure that all customers are held
18 neutral, neither advantaged nor disadvantaged, from the
19 impact of the renewable electricity procured on behalf of
20 the program customer."

21 And the bill credit mechanism that Duke has
22 proposed that is based upon the CPRE weighted average
23 would not hold the non-participating customers neutral,
24 as is required by subsection (e), and instead --

1 CHAIRMAN FINLEY: That's if you interpret
2 avoided cost as administratively determined long-term
3 avoided cost under PURPA, as I understand the argument.

4 MS. KEMERAIT: Right. That is correct.
5 However, the methodology for determining avoided cost has
6 been the -- the avoided cost rate has been based upon --
7 the proper mechanism is the administratively approved
8 avoided cost rate, and the one -- the avoided cost rate
9 that has currently been approved is approved by the
10 Commission in Docket E-100, Sub 148, and that has been
11 the mechanism for determining the avoided cost rate.

12 And I will digress for a moment to provide a
13 response to some questions, I believe, from Mr.
14 Clodfelter, Commissioner Clodfelter, about the Wal-Mart
15 settlement. And NCCEBA does not necessarily oppose the
16 Wal-Mart settlement because we have believed that it is
17 acceptable to have more than one option for determining
18 the bill credit and the self-supply option. However, we
19 believe that the bill credit mechanism in the Wal-Mart
20 settlement is not based upon an avoided cost mechanism.
21 The Commission has never used the methodology, this day-
22 ahead forecasting that is proposed for the Wal-Mart
23 settlement, it has never used that type of mechanism for
24 determining avoided cost, but the Commission, as the

1 Commissioners are well aware, has always considered, is
2 the administratively approved avoided cost rate for -- to
3 determine the avoided cost rate. And so what we --

4 CHAIRMAN FINLEY: If these are renewable
5 developers or looking for a contract greater than five
6 years, they're not entitled to the administratively
7 determined avoided cost, are they?

8 MS. KEMERAIT: They are not entitled to -- they
9 are not entitled to more than five years. However, the
10 issue is, is a balancing because there is nothing that
11 would prevent them from having more than a five-year
12 avoided cost rate. This is not under PURPA. This is
13 based upon avoided cost under the GSA statute, and what
14 the -- what the Commission needs to consider is that the
15 GSA customers are looking for long-term pricing
16 stability, and what the GSA customers have been asking
17 for is a 20-year avoided cost rate.

18 What NCCEBA -- we've had a number of
19 discussions with Mr. Jirak and also --

20 CHAIRMAN FINLEY: Let me just -- let me say I
21 understand what you want, and I understand what you say
22 you need to participate in the program and all that type
23 of thing. What I'm having trouble with is this argument
24 that what is being proposed here by anybody is unlawful

1 because this is a pretty broad statute.

2 MS. KEMERAIT: Right. And I would -- and what
3 I would state is it is not unlawful because it does not
4 state what that avoided cost term is. And it could be
5 interpreted to be five years, 10 years, or 20 years. And
6 so I think what is before the Commission to determine is
7 what is the avoided cost rate that would be appropriate
8 for the GSA Program.

9 And what Duke has stated -- and I will jump
10 ahead a little bit. What Duke has argued is that
11 initially, Duke had stated that the bill credit for the
12 self-supply option needed to be based upon the CPRE
13 program. However, the CPRE program is in no way linked
14 to the GSA Program. The only link between the GSA
15 Program and the CPRE program is a provision in section --
16 I believe it is (d) --

17 CHAIRMAN FINLEY: Ms. Kemerait, I don't think
18 anybody would argue that it's required.

19 MS. KEMERAIT: Right.

20 CHAIRMAN FINLEY: It's not linked. I think
21 everybody agrees with that.

22 MS. KEMERAIT: Right.

23 CHAIRMAN FINLEY: I think the question is, is
24 it prohibited?

1 MS. KEMERAIT: Right. It is not prohibited,
2 and likewise, a 20-year avoided cost rate is not
3 prohibited and a 10-year avoided cost rate is not
4 prohibited.

5 I'll spend a little bit more time with some
6 additional matters and then I will proceed to describe to
7 the Commission the compromise NCCEBA has proposed that we
8 believe meets the language and the intent of the statute,
9 and it also will meet the objectives of ensuring that the
10 non-participating customers are held neutral.

11 And as just a little bit of background, as the
12 Commission recalls, the Commission had approved the Green
13 Source Rider Pilot Program in December of 2013 in E-7,
14 Sub 1043, and that pilot program allowed certain
15 nonresidential customers to procure renewable energy and
16 capacity in DEC territory, but not in the DEP territory.

17 The problem had some flaws, including that the
18 capacity was limited to procurement just in DEC
19 territory, and so it was utilized only by a small number
20 of businesses. However, that low participation in no way
21 was due to a lack of interest in procuring Green Source
22 Advantage Program, and so University of North Carolina,
23 the Department of Defense, and a number of large electric
24 customers had been seeking an expanded green source

1 program that would include in the DEP territory that
2 would allow them to select a renewable energy supplier,
3 have the possibility of achieving savings, would allow
4 them to achieve long-term price stability. And I think
5 that that is a really critical component for determining
6 what the avoided cost rate should be. Should it be five
7 years, 10 years, or 20 years? And also to meet their
8 sustainability goals.

9 So when the Legislature enacted 62-159.2, that
10 was to ensure that the large electric users would be able
11 to have the ability to procure cost-effective renewable
12 energy and capacity to meet their sustainability goals,
13 allow long-term price certainty, and not create
14 disincentives for participation in the program.

15 And what the customers have found is that the
16 program, as written by Duke, has created substantial
17 disincentives to participate in the program. And some of
18 the customers have stated they will likely not
19 participate unless the program is rejected and rewritten
20 to comply with the language and the intent of the
21 program.

22 And as Chairman Finley stated earlier, the big
23 issue before the Commission about the program is about
24 the bill credit mechanism for the self-supply option.

1 And House -- as I mentioned, we -- NCCEBA is not
2 objecting to the stipulation that has been entered into
3 between Duke and Wal-Mart, but what we are seeking is a
4 second option, a second option based upon the 10-year
5 avoided cost, and that basis of the 10-year avoided cost
6 will allow a program that will be feasible, will not --
7 will hold the non-participating customers neutral, and
8 will allow some price certainty for the large electric
9 customers. And this is very much a compromised view.

10 Prior to the beginning of our discussions with
11 Duke, the large customers had been seeking, as I
12 mentioned, a 20-year avoided cost rate. What we have
13 spent quite a bit of time analyzing and looking into to
14 determine whether this could be a proposition that would
15 make the GSA Program feasible will be a bill credit for
16 the self-supply option based upon a 10-year avoided cost
17 rate.

18 And one of the things that we -- we wanted to
19 make sure that it would be achievable for the customers
20 based upon providing some level of price certainty. We
21 also needed to ensure that it would meet the bill credit
22 requirement in 62-159.2(e) that states, "The Program
23 customer shall receive a bill credit for the energy as
24 determined by the Commission; provided, however, that the

1 bill credit shall not exceed the utility's avoided cost."
2 And I will mention that there were some questions before
3 about what that avoided cost should be, and it should be
4 based upon the Commission's currently approved avoided
5 cost rate.

6 And subsection (e) goes on to state that, "The
7 Commission shall ensure that all other customers are held
8 neutral, neither advantaged nor disadvantaged, from the
9 impact of the renewable energy electricity procured on
10 behalf of the" -- GSA -- "customer."

11 Duke's linkage of the GSA Program through the
12 bill credit to the CPRE program is very problematic. It
13 has stated in its initial comments and then also in its
14 reply comments that the bill credit needs to be equal to
15 the CPRE weighted price, but by doing so, that would
16 provide improper advantages to the non-participating
17 customers and would provide disincentives to the GSA
18 customers because it would cost more for the GSA
19 customers to participate in the program.

20 And by requiring that the renewable energy be
21 procured at a price lower than the avoided cost, savings
22 would, in fact, be passed on to the non-participating
23 customers or the general ratepayers, but there would be
24 no opportunity for a financial benefit to the GSA

1 customers.

2 As Chairman Finley has stated, it is not
3 required by the statute, but it is, in fact, contemplated
4 by the statute because the statute states that the bill
5 credit shall not exceed the avoided cost rate, and so
6 there is express language of at least that contemplation
7 that it should be based upon avoided cost rate.

8 The avoided cost rate is also the appropriate
9 mechanism for the -- for determining the bill credit to
10 achieve what is described as the neutrality requirement
11 under 62-159.2(e) because it will protect the non-
12 participating customers from being disadvantaged.

13 And then also I think it's worth pointing out
14 -- I know that Mr. Dodge will be providing some argument
15 later, but in the Public Staff's reply comments, the
16 Public Staff had recommended that the bill credit
17 mechanism be based upon the administratively determined
18 avoided cost rate. And the Public Staff, in the reply
19 comments, specifically recommended a bill credit equal in
20 length to the term of the PPA and that the bill credit
21 would be fixed for no more than 10 years and then
22 refreshed to reflect the avoided cost rates for the
23 remainder of the PPA term. And that was done in an
24 effort to ensure protection of the non-participating

1 customers to ensure that the avoided cost rates did not
2 become stale.

3 And I had passed up to the Commission and to
4 all of the attorneys a proposal that we had provided and
5 shared with the Public Staff and then also with Duke's
6 attorneys, and this is NCCEBA's proposal. As I
7 mentioned, it's a compromise proposal. The customers
8 were seeking a longer avoided cost rate term longer than
9 10 years, but based upon the Public Staff's
10 recommendation and then in an effort to ensure that there
11 would be -- there would not be stale avoided cost rates,
12 we had provided this proposal. And I won't read the
13 entire proposal, but I think it's worth reading the first
14 two paragraphs. And this is how we would propose that
15 the bill credit mechanism be established.

16 The bill credit shall be fixed for an initial
17 period equal to the shorter of, number one, the term of
18 the GSA service agreement; number two, 10 years; or
19 number three, such shorter period as may be mutually
20 agreed to by the Utility and the GSA customer.

21 For the avoidance of doubt for a GSA service
22 agreement with a term of 10 years or longer, the initial
23 fixed term of the bill credit shall be 10 years unless
24 shortened by mutual agreement of the parties.

1 Where the GSA service agreement has a term that
2 exceeds the initial fixed term of the bill credit, the
3 bill credit for subsequent years shall be refreshed for a
4 subsequent fixed term.

5 Unless other mutually agreed to by the parties,
6 the duration of the subsequent fixed term of the bill
7 credit shall be equal to the shorter of, number one, the
8 remainder of the term of the GSA service agreement or,
9 number two, 10 years. And then number three -- the third
10 paragraph addresses the avoided cost rate, and it states
11 that the bill credit for the initial fixed term shall
12 equal the Utility's avoided cost calculated over the term
13 of the GSA service agreement, but not to exceed a 10-year
14 avoided cost calculation.

15 The avoided cost rates applicable to the
16 initial bill credit shall be based on the Commission's
17 most recently approved avoided cost methodology in effect
18 at the time that the Commission approves a GSA Program,
19 and shall be included by the Utility for periods from two
20 to 10 years in its final GSA Program plan.

21 The bill credit for any subsequent fixed term
22 shall equal the Utility's avoided cost calculated over
23 the subsequent fixed terms and shall be based on the
24 Commission's most recently approved avoided cost

1 methodology in effect at the time of the refresh. So,
2 for example, if the GSA service agreement was for 12
3 years, the -- there would be -- the initial period would
4 be for a 10-year avoided cost term, and then the initial
5 two years would be for a two-year avoided cost term.

6 And from our discussions with Duke, Duke is now
7 in agreement that an option for the bill credit should be
8 based upon the avoided cost rate. However, where the
9 disagreement is, and I think this is the issue that the
10 Commission is going to have to look most closely at, and
11 this is, I believe, the crux of whether this program can
12 be feasible and workable for the GSA customers, is
13 whether the avoided cost term should be based upon a
14 five-year term, as proposed by Duke, or a 10-year
15 compromise term, as proposed by NCCEBA and as generally
16 supported by the large electric customers.

17 And in requesting the 10-year avoided cost term
18 as opposed to the five-year avoided cost term, it will
19 make participation more likely and possible from the GSA
20 customers who have been looking for a Green Source
21 Advantage Program for many years now, because a five-year
22 avoided cost rate will not provide the price certainty
23 that is requested and needed by the customers for
24 participation.

1 And I'm going to move on. There are two other
2 issues that I believe are very important. They're not
3 quite as important as the bill credit issue, but they are
4 about the purchase power agreement, the GSA PPA, and then
5 also about the allocation between DEC and DEP. So I'll
6 move quickly through these two additional points.

7 In regard to the GSA PPA, 62-159.2(b) states
8 that, "Each public utility's program application required
9 by this section shall provide" -- "contract terms and
10 conditions for participating renewable energy suppliers
11 from which the electric public utility procures energy
12 and capacity on behalf of the participating customer."

13 And I'd like to provide just a little bit of
14 chronology about what was provided in this docket. On
15 January the 23rd of 2018, Duke filed its program
16 application, but in its program application it failed to
17 file its GSA contract with the application.

18 Initial comments were filed in February of
19 2018, and in NCCEBA's initial comments, along with a
20 number of the other Intervenor, we informed Duke and the
21 Commission that Duke had failed to file the GSA PPA as
22 required by the statute.

23 Duke filed its reply comments on April the 20th
24 and, again, did not file its GSA PPA.

1 About seven months after Duke filed its program
2 application, it filed a redline version of its CPRE PPA,
3 and it filed that this past Wednesday on August the 29th.
4 The statute requires that the GSA PPA, the contract terms
5 and conditions are to be approved along with the
6 application. And the customers were not part of the CPRE
7 docket, and also CPRE and GSA are in no way linked with
8 the exception of an allocated capacity at the end of the
9 GSA Program will be turned over to the CPRE program. And
10 those customers did not have an opportunity to provide
11 any written comments on the PPA.

12 And the final issue is about the jurisdictional
13 allocation between DEC and DEP. And Duke's program
14 application has proposed a specific allocation of the
15 unreserved capacity between DEC and DEP, and what is
16 proposed is to allocate 250 megawatts of the unreserved
17 capacity to DEC -- excuse me -- of the 250 megawatts of
18 unreserved capacity, 160 megawatts will be allocated to
19 DEC customers and 90 megawatts will be allocated to DEP
20 customers.

21 The GSA statute does not allow Duke to dictate
22 how to allocate the unreserved capacity between the
23 service territories, and to the contrary, 62-159.2(d)
24 specifically states that unused capacity from UNC or the

1 military is to be reallocated for use by any eligible
2 program participant. And if Duke is able to allocate the
3 250 unreserved megawatts between DEC and DEP, that will
4 have an effect upon the participation by the GSA
5 customers.

6 And, again, one of the problems that I
7 mentioned about the Green Source Pilot -- the Green
8 Source Rider Pilot Program was that allocation was only
9 in the DEC territory and not in DEP, and as proposed by
10 Duke, this program would likewise have a significant
11 shortcoming of limitation in the DEP territory.

12 Thank you very much.

13 CHAIRMAN FINLEY: Questions? Questions of Ms.
14 Kemerait? All right, Mrs. -- do you have questions?

15 COMMISSIONER CLODFELTER: Yeah. I think I
16 understood your answers to the Chairman's questions that,
17 if I understood you correctly, that it's not
18 impermissible or a violation of the statute for the
19 Commission to establish a bill credit mechanism other
20 than administratively determined avoided cost as long as
21 whatever we establish doesn't exceed the administratively
22 avoided cost. Did I understand you agreed with the
23 Chairman on that?

24 MS. KEMERAIT: What the --

1 COMMISSIONER CLODFELTER: The General Assembly
2 did not say the bill credit shall equal avoided cost.

3 MS. KEMERAIT: Right.

4 COMMISSIONER CLODFELTER: It's a very simple
5 matter of English.

6 MS. KEMERAIT: Right. It did not say that the
7 bill credit shall equal the Utility's avoided cost. That
8 is correct.

9 COMMISSIONER CLODFELTER: It shall not exceed.
10 And so we can establish a different mechanism for the
11 bill credit provided it does not exceed avoided cost, and
12 I think you're in agreement on that.

13 MS. KEMERAIT: The -- I would -- I would state
14 that the statute does not say that you are prevented from
15 doing so --

16 COMMISSIONER CLODFELTER: Right.

17 MS. KEMERAIT: -- but I think that the better
18 response is that the Utility's avoided cost rate, it is
19 sufficient to ensure that there will be no disadvantage
20 to non-participating customers and is an appropriate
21 mechanism as contemplated by the statute.

22 COMMISSIONER CLODFELTER: I understand that's
23 the position. Duke says, well, we have an issue here
24 reading the statute as a whole, which we are obligated to

1 do, that we now have a new benchmark that's been
2 introduced into the regulatory scheme, and that is the
3 competitive bid process and the prices that are generated
4 by the competitive bid price. And we know from the
5 statute, too, that those prices are going to be lower
6 than traditional administratively determined avoided cost
7 because that's the only way Duke is going to take the
8 bids. They don't have to take any bids that are greater
9 than avoided cost. So we have a new benchmark.

10 What I want someone to talk about is why is it
11 inappropriate to use that benchmark? Not why you prefer
12 a different benchmark. I understand why you prefer a
13 different benchmark. I understand that. Why is it
14 inappropriate to use that benchmark?

15 MS. KEMERAIT: For the CPRE weighted average
16 price?

17 COMMISSIONER CLODFELTER: Yeah, because the
18 Company's position is -- look, I mean, I've been doing
19 some scenarios sitting up here. There's a great
20 potential for arbitrage, playing arbitrage here. If we
21 have a CPRE benchmark price that is lower than avoided
22 cost, then everyone can sort of look at the Delta between
23 those two, negotiate a GSA contract price in between,
24 split the difference between the customer and the

1 credit which would be less than the utility's avoided
2 cost.

3 So if the bill credit is less than what the
4 avoided cost rate would be, they will be paying for a
5 product charge, the administrative charge, and then they
6 would only be entitled to receive in return that bill
7 credit. So they will be paying more by the additional
8 charges that are required in the GSA Program. And by
9 using a bill credit at the avoided cost, that would be
10 appropriate because they would therefore not be paying
11 more for participation in the GSA Program.

12 COMMISSIONER CLODFELTER: I still don't think
13 you're grappling with the conundrum that's been created
14 for us by the statute, is that we have this phrase
15 avoided cost in there and we have yet a price that's
16 below avoided cost now.

17 MS. KEMERAIT: Well --

18 COMMISSIONER CLODFELTER: And how are we -- has
19 the General Assembly suggested to us, and that's the
20 Company's position, that reading all this totality --
21 statute in totality, that we're to move toward a more
22 market-based pricing system? That seems to be consistent
23 with every section of House Bill 589, is toward a more
24 market-based pricing structure as a regulatory policy.

1 So I hear what you prefer. I know what you prefer. I
2 understand why you don't like that, but I'm trying to
3 figure out what are the policy reasons why I should
4 choose your position rather than the Company's position.

5 MS. KEMERAIT: Okay. Well, the policy reasons
6 are for CPRE it is a competitive procurement and it is
7 going to be priced below the avoided cost. CPRE statute
8 also does not refer to avoided cost in the CPRE statute.
9 A market mechanism is clearly what's contemplated by the
10 CPRE statute. However, in the GSA statute there are
11 different objectives and goals: The objectives and the
12 goals are to ensure that there will be participation and
13 that the -- the other goal is to ensure that the
14 ratepayers are not going to be -- they're going to be
15 held neutral, that they will not be advantaged. And if
16 you use the CPRE weighted average, the ratepayers will,
17 in fact, be advantaged, which is contrary to the express
18 requirement of the GSA statute.

19 COMMISSIONER CLODFELTER: Only if I read
20 avoided cost to mean what you say avoided cost means.
21 And, again, that's, again, the conundrum here of the
22 interpretation of the statute. I get a strong whiff of
23 market principles --

24 MS. KEMERAIT: Uh-huh.

1 COMMISSIONER CLODFELTER: --in this GSA section
2 of House Bill 589. Customers choose the supplier.
3 Begins to sound like retail choice, doesn't it? A little
4 bit of that, a whiff of retail choice. Customer
5 negotiates the price. I get a little sort of whiff of
6 retail choice there.

7 So, I mean, again, the policy objectives of
8 this legislation, section after section after section are
9 driving toward choice and market-based pricing
10 principles. So, again, I want someone to tell me not why
11 you prefer the use of avoided cost, but why the Company's
12 policy take on the statute is wrong.

13 If you don't want to -- I just -- I put the
14 question out there. That's where I'm left after reading
15 all the paper.

16 MS. KEMERAIT: Well, the -- again, I would
17 state that the way that the Commission has established
18 avoided cost is through the administratively approved
19 avoided cost proceeding.

20 COMMISSIONER CLODFELTER: Prior to 589, that's
21 absolutely correct.

22 MS. KEMERAIT: Well, I don't think 589 changed
23 that because we -- we continue to have an avoided -- we
24 have a competitive procurement. We also have an avoided

1 cost proceeding and an avoided cost rate that is in
2 existence under E-100, Sub 148, that will be --

3 COMMISSIONER CLODFELTER: For a dramatically
4 narrow universe of projects, dramatically. I have to
5 look at that policy. I've given you enough trouble. I'm
6 done. I'm done. I'll leave you alone.

7 MS. KEMERAIT: Okay. Thank you.

8 COMMISSIONER CLODFELTER: Yeah.

9 CHAIRMAN FINLEY: Yes, ma'am.

10 COMMISSIONER BROWN-BLAND: Ms. Kemerait --

11 CHAIRMAN FINLEY: Another question for you,
12 please.

13 COMMISSIONER BROWN-BLAND: So as I understand
14 the statute, Ms. Kemerait, and this language we're
15 focusing on is this credit is not to exceed the avoided
16 cost, and so that, by definition, is something -- some
17 cost that's avoided, correct?

18 MS. KEMERAIT: That is correct.

19 COMMISSIONER BROWN-BLAND: And so does Duke
20 actually avoid the CPRE cost or are they actually
21 avoiding the cost of the marginal unit, the incremental
22 cost?

23 MS. KEMERAIT: So the cost avoided by the GSA
24 Program is not the CPRE purchases or additional

1 purchases, but the operation under GSA of the utility's
2 existing fleet to serve the GSA customer, so they are not
3 avoiding cost in the CPRE program, so it is a -- it is a
4 different situation.

5 COMMISSIONER BROWN-BLAND: So defining this
6 avoided cost as the CPRE cost would be contrary to your
7 reading of the statute?

8 MS. KEMERAIT: That is correct.

9 COMMISSIONER BROWN-BLAND: Okay. And does the
10 statute, as it's written, contemplate the situation where
11 GSA customers don't participate or was it -- or was there
12 a different intent?

13 MS. KEMERAIT: The statute contemplates -- the
14 intent of the statute is for robust participation, and
15 that was part of the negotiations for House Bill 589.
16 However, it states that -- this is under subsection (d),
17 "If any portion of the 600 megawatts of renewable energy
18 capacity provided for in this section is not awarded
19 prior to the expiration of the program, it shall be
20 reallocated to and included in a competitor procurement
21 in accordance with" the CPRE program statute.

22 COMMISSIONER BROWN-BLAND: So it made a
23 provision for that situation, so any portion includes the
24 whole. That whole amount is not -- that whole goes

1 backwards. Is that contrary to?

2 MS. KEMERAIT: I'm sorry. I had trouble
3 hearing you.

4 COMMISSIONER BROWN-BLAND: If it says the
5 portion, any portion. Any portion includes the whole.
6 So would you say the statute did contemplate none of the
7 -- none of that amount being taken by the customers?

8 MS. KEMERAIT: I think the statute would
9 contemplate that if any amount, which could be the entire
10 amount of the GSA allocation or some smaller portion of
11 it, is not allocated in the GSA Program, then at the end
12 of the program it would be converted to the CPRE program.

13 COMMISSIONER BROWN-BLAND: Including the whole
14 amount if nobody --

15 MS. KEMERAIT: Including the whole amount if no
16 one participates. And clearly, that was not the intent
17 of the Legislature. The Legislature intended for this to
18 be a fully subscribed program with robust participation.

19 COMMISSIONER BROWN-BLAND: Thank you.

20 COMMISSIONER MITCHELL: Chairman Finley, one
21 question.

22 CHAIRMAN FINLEY: Commissioner Mitchell has a
23 question.

24 COMMISSIONER MITCHELL: Ms. Kemerait, in the

1 discussion that's ensued about this program, the
2 development of this program, has there been any
3 consideration given to the development of a new retail
4 rate schedule that would be available for participating
5 customers?

6 MS. KEMERAIT: I don't know the answer to that,
7 but I can provide some additional information --

8 COMMISSIONER MITCHELL: Okay.

9 MS. KEMERAIT: -- after the oral argument.

10 COMMISSIONER MITCHELL: And you spoke briefly
11 about the pilot program, the Green Source Rider Program
12 that was in existence several years ago, and compared it
13 to the statute that has established this new program.
14 And one of the -- it's my understanding that one of the
15 significant differences that you didn't mention was that
16 the new program is available to existing load as well as
17 new load; is that your understanding?

18 MS. KEMERAIT: That is correct.

19 COMMISSIONER MITCHELL: Okay. So the old
20 program was available only to new load.

21 MS. KEMERAIT: That is correct.

22 COMMISSIONER MITCHELL: Okay. And has there
23 been in -- in the discussions had about the appropriate
24 bill credit mechanism and the statute's mandate that we

1 ensure that non-participating customers are neither
2 advantaged or disadvantaged, has that new fact changed
3 the calculus at all? Has it changed sort of the analysis
4 that any of the parties have undertaken? And let me ask
5 that a different way.

6 MS. KEMERAIT: Okay.

7 COMMISSIONER MITCHELL: Did you -- did your
8 client take that into consideration as it was thinking
9 through how to develop this new program relative to how
10 the old program was developed?

11 MS. KEMERAIT: I think that that was taken into
12 consideration because it -- and I may, Commissioner
13 Mitchell, need to follow up with some additional
14 information for those who are part of those negotiations.

15 COMMISSIONER MITCHELL: Okay. And if someone
16 -- it may be that someone -- the Public Staff may be able
17 to answer that question as well. So I didn't mean to ask
18 you a question that you weren't in a position to answer,
19 but I just -- that is a question that I have as I listen
20 to the parties present their positions here because it's
21 a significant difference between the old program and the
22 new program, and how do we -- you know, how do we
23 consider that as we are making decisions about this new
24 program.

1 MS. KEMERAIT: Okay. Thank you.

2 CHAIRMAN FINLEY: Mr. Smith?

3 MR. SMITH: Good afternoon. My name is Ben
4 Smith. I'm Regulatory Counsel here on behalf of NCSEA,
5 North Carolina Sustainable Energy Association. I'm going
6 to go ahead and start by saying that I've crossed out
7 some sections that have already been covered, and to the
8 extent that we agree with it, NCSEA will state its
9 position we're in agreement with whoever stated those
10 positions.

11 Quick overview, NCSEA's position is a
12 successful Green Source Advantage Program will comply
13 with the statute, work for customers who hit the
14 requirements of the statute, work for the renewable
15 energy developers so that the projects can get off the
16 ground, and hold the non-participating parties neutral,
17 harmless. Each of the programs proposed by Duke in this
18 docket we feel, including the Wal-Mart stipulation, fail
19 at succeeding in these four integral tenets.

20 I should go ahead and start by saying that
21 NCSEA believes that the bill credit should be tied to
22 avoided cost as administratively determined in the
23 biennial proceeding. That's our position, and so
24 therefore that is why we don't think in an overlaying,

1 overarching point that these programs will not work. And
2 when I say don't work, I mean they don't comply with the
3 statute.

4 Our view is that the statute states
5 specifically that it ties to avoided cost. No, it does
6 not specifically point out the avoided cost as set forth
7 by the avoided cost statute or in the biennial
8 determination or so forth, but consistent with some of
9 the other dockets that I'll get into shortly, that's how
10 this Commission has determined what avoided cost means
11 for the most part.

12 The standard offer, the self-supply in Wal-
13 Mart's stipulation, also the self-supply option with the
14 five-year avoided cost, do not comply. The five-year
15 avoided cost is uniquely positioned in that it allows for
16 an avoided cost methodology that works, but doesn't allow
17 for a reasonable hedging opportunity which we believe, as
18 Commissioner Clodfelter referenced before, that there's
19 market forces that were intended with this statute.

20 The GSA statute specifically calls for the bill
21 credit to be capped at the avoided cost rate which is
22 determined by the Commission. And I think it's important
23 to say that when it's determined by the Commission
24 administratively, there's a chance for pleadings to be

1 filed, for testimony to be filed, in the past, for cross
2 examination as necessary, and other evidence and findings
3 to be made. This is not -- this is something that's been
4 determined at the Commission level after significant
5 review. It's hotly contested, as all of you know, so
6 it's not as though this isn't something that all the
7 parties have a chance to contemplate, unlike, for
8 instance, the Wal-Mart stipulation which the other
9 parties did not have a chance to contribute to.

10 It's further important to note the dockets for
11 the underlying statute seeks avoided cost determination
12 such as the demand-side management energy efficiency
13 docket, the CPRE docket, the REPS Rider docket, and
14 notably the community solar docket which in Duke's
15 application did prescribe for 20-year contracts. There's
16 no distinction --

17 COMMISSIONER CLODFELTER: Let me stop you for a
18 minute.

19 MR. SMITH: Sure.

20 COMMISSIONER CLODFELTER: What do you draw from
21 the fact that the community solar statute says explicitly
22 that the bill credit shall be avoided cost and this
23 statute says shall not exceed?

24 MR. SMITH: I think it goes to --

1 COMMISSIONER CLODFELTER: As a matter of
2 statutory construction do you see any significance in
3 that different choice of words?

4 MR. SMITH: I do. I think it goes to the
5 market forces that you referenced earlier in a question.
6 I think that the intent of the statute is for a renewable
7 supplier to negotiate directly with a large commercial
8 consumer, a university, the military.

9 I think here, Duke here is not seeking to
10 recover its cost, unlike in those other dockets where
11 they utilize avoided cost rates. Here it seems like Duke
12 is seeking to stop or somehow hold up the positions of
13 power, the contracting power between the GSA customers
14 and the renewable energy suppliers.

15 N.C.G.S. 62-156 directs the Commission to hold
16 biennial avoided cost proceedings to implement PURPA, and
17 so our position is that for the Commission to approve
18 another method to determine an avoided cost amount, as
19 necessary for the bill credit cap here, let alone three
20 to four additional methods, that would severely undermine
21 that docket and the meaning of avoided cost. I'm not
22 sure how you can establish a bill credit cap when there
23 are several different versions of what the bill credit
24 cap is.

1 Furthermore, it's our position that Duke gets
2 to use long-term PPAs and biennially determined avoided
3 cost amounts to hedge against future increases in the
4 cost of generation, so why should GSA customers be
5 restricted from hedging against future increases in
6 Duke's retail rates?

7 NCSEA believes that the intent of the GSA
8 statute was to allow, as I've said already, the free
9 negotiation between the customers and the renewable
10 producers. Duke should merely serve as a turnstile or a
11 middle man, and there's no real need for such a deep and,
12 I don't know, comingling of the funds as prescribed in
13 each of their programs.

14 The Wal-Mart stipulation, the standard offer,
15 even the self-supply, we don't necessarily think those
16 are bad tariffs. If you might recall that the -- our
17 initial Green Source Rider was not required by statute,
18 but was, rather, a pilot program that was established.
19 We think that there's no reason that the Wal-Mart
20 stipulation couldn't be an established tariff. We don't
21 have any problem with it. We just don't think it should
22 cost against that 600 megawatts that's stipulated in that
23 statute. And same thing with all the other proposed
24 programs so far as they fall outside of that avoided cost

1 mechanism which is biennially determined.

2 I do want to point out as well something that
3 came to light today. I think it's interesting that Wal-
4 Mart stated that from their perspective, long-term
5 contracts hinder them as a customer. They're looking for
6 innovation, for things to change over time, and that's
7 their business plan. There's no problem with that. On
8 the same terms, Duke has referred to these long-term
9 contracts under the GSA that we're advocating for as a
10 hedging mechanism and said that those will cause stale
11 rates and cause issues for the non-participants who will
12 no longer be held neutral. I feel like there's
13 inconsistency there, and that inconsistency is consistent
14 with the reading of the statute that avoided cost, as
15 administratively determined, provides for the parties to
16 interact and it to be a living thing over time. Every
17 two years we come back and we determine it.

18 NCSEA supports NCCEBA's position and Google's
19 position on the service territory allocation. NCSEA
20 supports UNC's position on dispatch control. And I just
21 want to add that unlike the CPRE statute which
22 specifically deals with dispatch control issues, this one
23 does not, so I don't believe that's intended in the
24 statute.

1 In North Carolina 37 national companies have
2 made a commitment to a hundred percent renewable energy
3 usage. Another nine companies have also made meaningful
4 renewable energy commitments. And that's not including
5 some of the smaller companies that we don't have the data
6 for. All of them are prospective participants in this
7 program, along with the major universities and the
8 military, which are earmarked 350 megawatts in the
9 statute.

10 It's paramount, in our view, to North
11 Carolina's financial future to allow for these companies
12 to meaningfully participate in clean energy programs.
13 Roadblocks, such as issues with determining avoided cost
14 or the territory split or dispatch control, are harmful
15 to the clean energy future of our economy.

16 This was touched on by NCCEBA, but I want to go
17 ahead and go off Karen's comments a little bit because
18 this goes to Commissioner Clodfelter's question. We
19 believe the CPRE as a bill credit is inappropriate -- the
20 CPRE tranche method is inappropriate because it
21 advantages non-participants, and that's because by
22 capping the bill credit mechanism for certain
23 participants to the lesser of the PPA price -- PPA price
24 or avoided cost, Duke's proposals result in cross

1 subsidization by transferring benefits from the GSA
2 participants to all other customers in violation of the
3 statute. So it's not really about the bill credit cap.
4 It's about holding the non -- the customers neutral.

5 If the PPA price negotiated between a
6 participant and a renewable energy facility developer is
7 below Duke's avoided cost, then the difference between
8 Duke's avoided cost, the PPA price would represent that
9 benefit to either the companies or to non-participating
10 customers at the expense of participants.

11 Finally, one thing that hasn't really been
12 touched on fully, but I do think this was brought up a
13 bit, the cost recovery issue here, I think, has not been
14 made clear, to us at least. The statute states that the
15 GSA customer shall, one, pay their normal retail bill;
16 two, pay the cost of the renewable procured energy; and
17 then three, that that's offset by a bill credit.

18 Duke has referenced the Fuel Rider statute
19 clause where it says that Duke can recover all non-
20 administrative costs related to the Renewable Energy
21 Procurement Program under G.S. 62-159.2 not recovered by
22 the program participants. The GSA statute states the
23 total cost of renewable energy will be paid strictly by
24 the GSA customers, therefore, it seems to me that there's

1 some shifting of cost here, some shifting where Duke is
2 saying the bill credit, which we believe was intended by
3 the statute to align with renewable energy procurement
4 and related PPAs, should be recovered from the
5 ratepayers. NCSEA does not believe that was what the
6 intent of the statute was. Instead, the bill credit
7 should be kept wholly separate from non-participating
8 ratepayers.

9 We don't see any reason that the bill credit
10 should stray from being the amount capped by the current
11 biennially determined administrative avoided cost rate
12 credited to a GSA customer during their GSA contract that
13 reflects their ability to hedge energy prices at the time
14 they entered into that contract, less Duke's reasonable
15 administrative and engineering cost to get the renewable
16 energy on the grid.

17 We feel like this program has gotten more
18 complicated than it was intended to be by the statute,
19 and that by increasing the options, which, again, we're
20 not against the idea of having more options, but what we
21 are against is using this statute as a means to use
22 things that don't comply with the intent of the statute
23 in taking away that 600 megawatts that has been
24 specifically dealt out.

1 We wonder whether the product charge plus the
2 Fuel Rider, it's a little unclear as to whether there
3 might be some surplus cost recovery there. At the very
4 least it requires during the Fuel Rider proceedings some
5 significant review and to make sure consistency is there
6 with the product charge.

7 And that actually concludes my comments. NCSEA
8 requests that the Commission direct Duke and the
9 Intervenors to design a new program that complies with
10 the statute and reject the programs offered by Duke
11 insofar as they are part of the GSA statute and
12 applicable to the 600 megawatts.

13 CHAIRMAN FINLEY: Thank you, Mr. Smith.
14 Questions?

15 COMMISSIONER BROWN-BLAND: I have a question.

16 CHAIRMAN FINLEY: Commissioner Brown-Bland has
17 a question for you.

18 COMMISSIONER BROWN-BLAND: Mr. Smith, so this
19 statute that's in question, again, speaks in terms of
20 cost, not price. In other words, it doesn't provide a
21 not-to-exceed price that the Company can purchase for.
22 It doesn't say shouldn't -- can't exceed the purchase
23 price in the market. It references a cost. How is the
24 market price the same as the cost that Duke avoids?

1 MR. SMITH: I'm not sure that we think that
2 that -- that they are the same thing. I think that Duke
3 avoids the cost that it -- that it would cost for them to
4 generate the power. To us, if a GSA customer can enter
5 into a contract with a renewable energy supplier that's
6 beneficial to that GSA customer and it's a hedge against
7 whatever it could be up to the avoided cost amount, then
8 they can offset by that amount.

9 COMMISSIONER BROWN-BLAND: So that Duke gets a
10 good deal in the market through its competitive process,
11 gets a good deal, comes in under its actual cost. Is
12 there some implication in the statute that that good deal
13 is this -- is this ceiling that we're talking about?

14 MR. SMITH: Well, that's what I believe, the
15 administratively determined avoided cost is the good deal
16 if we're talking about the GSA participant. Is that what
17 you're saying?

18 COMMISSIONER BROWN-BLAND: Well, I'm talking
19 about Duke. Duke goes into the market and comes out with
20 a great price --

21 MR. SMITH: Uh-huh.

22 COMMISSIONER BROWN-BLAND: -- the CPRE price, I
23 guess.

24 MR. SMITH: Uh-huh.

1 COMMISSIONER BROWN-BLAND: Is that -- I guess
2 I'm still getting at this question. Is that the cost
3 that Duke avoids or is it the cost of generating energy?

4 MR. SMITH: I think it's the cost -- our
5 position is that the avoided cost that's determined every
6 two years is the avoided cost that Duke can take
7 advantage of just like anyone else, so that if there is a
8 contract where a GSA customer enters into it and then the
9 terms change in two years and, you know, that is no
10 longer such a fruitful contract, then their contract is
11 -- it doesn't matter.

12 COMMISSIONER BROWN-BLAND: Well, what I'm
13 asking is the price that you can get in the market, is
14 that necessarily synonymous with the cost, and does the
15 statute contemplate that that's the cost that Duke
16 avoids?

17 MR. SMITH: I'm not sure. I think I would have
18 to go back and review and to give you -- I can give you
19 something after this hearing.

20 COMMISSIONER BROWN-BLAND: All right. Thank
21 you.

22 COMMISSIONER CLODFELTER: You covered a lot of
23 ground. I just want to be sure I understood one position
24 correctly, and it's a nuance of your position.

1 Is it your position that the Wal-Mart mechanism
2 is not permitted under the statute or that you just think
3 it should more appropriately be handled somewhere else?

4 Which is the --

5 MR. SMITH: Handled somewhere else and not
6 applied to the 600 megawatts.

7 COMMISSIONER CLODFELTER: You're not contending
8 that it doesn't comply with the statute?

9 MR. SMITH: No.

10 COMMISSIONER CLODFELTER: Okay.

11 MR. SMITH: It's --

12 COMMISSIONER CLODFELTER: I didn't want to
13 misunderstand you.

14 MR. SMITH: Sure.

15 COMMISSIONER CLODFELTER: Right.

16 CHAIRMAN FINLEY: Commissioner Mitchell?

17 COMMISSIONER MITCHELL: The Georgia Power
18 Program, the information that's been provided to us is
19 that it's -- it is or it was fully subscribed. Can you
20 tell us why that program worked, and it involved a credit
21 mechanism based on actual incremental costs? You know,
22 why did that -- why was that program successful or why
23 did customers choose to participate in that program, and
24 your sort of a similar mechanism that's been proposed

1 here has been described as being not feasible or not
2 appropriate or not likely to induce participation?

3 MR. SMITH: Sure. I can give you my answer
4 based on my knowledge. I can't say why it would work or
5 won't work.

6 COMMISSIONER MITCHELL: That's perfectly fine.

7 MR. SMITH: What I can say is that my
8 understanding is that there were -- that the politics of
9 clean energy in Georgia are different than they are here.
10 And that means that for some of the programs down there,
11 similar to what Google and the other participants did in
12 the pilot program a few years ago, sought to advance the
13 clean energy. I think that was part of that.

14 Secondly, and probably more importantly, that
15 program was for commercial and industrial consumers, I
16 believe, and it didn't have earmarked allowances for, for
17 instance, universities.

18 Finally, and I would have to look at it again
19 to be certain, but I believe that there was a provision
20 that allowed for early opt-outs of the contracts in that
21 program. There were 30-year contracts and you could opt
22 out of 10, something like that. I can provide you that
23 information after the hearing if you need it.

24 COMMISSIONER MITCHELL: Okay. Nothing further.

1 CHAIRMAN FINLEY: Thank you, Mr. Smith. Mr.
2 Stein? Thank you.

3 MR. STEIN: Good afternoon, Mr. Chairman and
4 members of the Commission. Again, Peter Stein for the
5 Southern Alliance for Clean Energy, and I will do my best
6 to keep my comments brief so as not to repeat the
7 arguments made by other Intervenors in the proceeding.

8 SACE's interest in this proceeding is in the
9 development of a Green Source Advantage Program that
10 complies with the requirements of House Bill 589, and
11 that similar to the views expressed by my colleagues, the
12 other Intervenors today, provides meaningful access to
13 renewable energy for the GSA customers as, I believe, was
14 contemplated by House Bill 589.

15 SACE expressed its concerns with multiple
16 aspects of the originally proposed GSA Program in our
17 initial and reply comments which I will not walk through
18 today, but I did want to provide SACE's position and
19 perspective on a couple of issues, including the Wal-Mart
20 proposed settlement.

21 Outside of what has gotten most of -- received
22 most of the attention today, which is the bill crediting
23 mechanism which I will discuss as well, SACE does believe
24 that the structure of the Wal-Mart settlement is more in

1 line with the intent of House Bill 589 and that it would
2 allow customers, and this is if the program was -- if
3 what is included in the Wal-Mart settlement was offered
4 more broadly to other customers as well, would provide
5 GSA customers the opportunity to negotiate regarding
6 price terms with renewable suppliers and also would allow
7 the renewable supplier to receive that negotiated PPA
8 rate through Duke Energy as a conduit over the duration
9 of the GSA agreement.

10 SACE believes that incorporating the applicable
11 renewable energy credits, or RECs, into the GSA product
12 charge with any energy and capacity available is also
13 more aligned with the intent of the statute rather than
14 negotiating a separate renewable energy credit
15 transaction.

16 And finally, providing additional terms in
17 addition to two and 20 years, as Duke Energy has included
18 in its reply comments, terms of five, 10, and 15 years,
19 again, we think is consistent with the intent of the
20 statute.

21 Would like to focus, again, as briefly as
22 possible today on the primary outstanding issue that has
23 received most of the attention, which, again, is the
24 appropriate bill credit the GSA customers participating

1 in the program will receive. And as we've heard today,
2 G.S. 62-159.2(e) requires that non-participating
3 customers are held neutral, neither advantaged or
4 disadvantaged. And as, again, we have heard today, there
5 is some fundamental, I think, differing of opinion on
6 what that means.

7 I will summarize our position simply to say
8 that SACE concurs with and supports the position of UNC,
9 NCCEBA, and NCSEA, that the appropriate bill credit would
10 be the Commission's currently determined avoided cost
11 rate, and that we believe that that avoided cost rate is
12 representative of the actual cost avoided of Duke Energy,
13 and also balance the interest and the intent of House
14 Bill 589 to provide a program that will fulfill the
15 institutional and organizational requirements and goals
16 of the delineated program participants, nonresidential
17 customers of a certain size, University of North
18 Carolina, and Department of Defense, and would also
19 mention, and this has been discussed as well with respect
20 to the Wal-Mart settlement, SACE does not oppose the
21 availability of a bill credit structure in the Wal-Mart
22 settlement as one non-avoided cost option for customers
23 such as Wal-Mart and others similarly situated that might
24 be able to manage that additional risk included in a --

1 or inherent in a -- essentially, a variable day-ahead
2 rate, but SACE does not believe that that rate should be
3 the only option available to customers, and that due to
4 the broad range of customers who may participate under
5 the GSA Program, that an avoided cost bill credit at
6 multiple contract period durations would provide the
7 necessary options and flexibility to suit the variety of
8 different customers who would be participating in this
9 program.

10 So in the interest of time, I will leave it at
11 that, but SACE appreciates the opportunity to address the
12 Commission about these important issues, and we welcome
13 any questions.

14 CHAIRMAN FINLEY: Well, for those of you who
15 participated in 589 and take the position that not to
16 exceed avoided cost means equal to the Commission
17 determined avoided cost rates as determined in its PURPA
18 proceedings every two years, did anybody request that the
19 General Assembly speak in that type of language?

20 MR. STEIN: I could not speak to that, Chairman
21 Finley. I think that that's -- that may be a fight for
22 another day, but the language as written, we do believe
23 that the appropriate rate was contemplated by 589, again,
24 to balance maintaining non-participating customer

1 neutrality with the General Assembly's clear intent of
2 supporting a Green Source Advantage Program and renewable
3 energy procurement for those eligible customers, that
4 that is the appropriate rate.

5 CHAIRMAN FINLEY: I gotcha. We -- you kicked
6 it over to our determination. Thank you. Thank you.
7 Other questions for Mr. Stein?

8 (No response.)

9 CHAIRMAN FINLEY: Thank you, sir.

10 MR. STEIN: Thank you.

11 CHAIRMAN FINLEY: Ms. Harrod?

12 MS. HARROD: Thank you, Chairman Finley.
13 Jennifer Harrod on behalf of the Attorney General's
14 Office.

15 So we're in a slightly unique position in that
16 I am not here to tell you exactly what I think the bill
17 credit should be, but to speak more generally and say
18 that the interest of the Attorney General is to see this
19 statute, 62-159.2, which is titled Renewable Energy
20 Procurement for Major Military Installations, Public
21 Universities, and Other Large Customers, is implemented
22 according to both the letter and the spirit of the law.

23 And in its initial application, Duke Energy
24 described this as being an opportunity to benefit all

1 customers by bringing cost effective new renewable energy
2 to the grid. And so it may be that I have a point of
3 philosophical disagreement with Commissioner Clodfelter
4 in that I think that the General Assembly and the people
5 assembled in this room did not argue long and hard over
6 this provision for -- I don't mean to suggest that you --
7 that you would agree with this point, Commissioner
8 Clodfelter, I apologize --

9 COMMISSIONER CLODFELTER: That's fine.

10 MS. HARROD: -- but I got ahead of myself --
11 that I don't believe that the people in this room argued
12 long and hard over this program for it to be a nullity.
13 And we have heard virtually everybody who is called out
14 by name or by category in the title of the bill lining up
15 to say that they're not interested in participating.

16 I don't represent those parties. I don't know
17 what it would take to get them to participate. But I do
18 believe that the statutory intent, when you -- given the
19 fact that the General Assembly specifically took more
20 than half of the allocated megawatts and dedicated them
21 to military institutions and to the university system,
22 both public entities that are well known to be cost
23 sensitive and be required to be cost sensitive, that it
24 is not part of the program for it to be driving to the

1 lowest dollar possible.

2 We came into this hearing -- I appreciate the
3 Commission's opportunity for us to have this hearing and
4 also to negotiate. We did make some progress. We came
5 into this hearing with Duke conceding that it would be
6 appropriate for the bill credit to be tied to the
7 administratively determined avoided cost. We're not in
8 disagreement -- the people in the room are not in
9 agreement about exactly what that would look like, but
10 they -- but they are in agreement that that would be an
11 appropriate measure.

12 Furthermore, it seems that there's large
13 consensus around the fact that because these customers
14 would be bringing new renewable energy to the grid, it
15 isn't a fixed pie. It isn't -- it isn't a zero sum gain.
16 They're bringing something to the grid, and if it can be
17 brought to the grid at a lower price, it doesn't hurt
18 non-participating customers if those people who bring
19 that energy to the grid share in that price reduction.

20 And so for that reason, you know, utility power
21 in North Carolina, we've all been graphically reminded
22 recently, is not a market. It is something where in
23 order to procure one's own energy, you do have to go
24 through these statutory scans, and the CPRE program, I

1 would submit, is not the "but for." You know, when we
2 say that customers are to be neither advantaged nor
3 disadvantaged, compared to what?

4 I would submit that it's not compared to the
5 CPRE program which itself is a specifically described and
6 megawatt-limited program. But it should not be
7 advantaged or disadvantaged compared to non-participating
8 customers which I think is supported by the language of
9 subpart (e) of that statute.

10 And so in conclusion, haven't taking much less
11 than my 15 minutes, I would respectfully submit that it
12 might be appropriate for the Commission to put in place
13 whatever it decides to do at the outcome of this hearing,
14 that it would put in place maybe a look back after a year
15 to see whether this program has succeeded or failed
16 because there is an overall -- there's something going on
17 here other than just the lowest cost power, which you all
18 know the Attorney General's Office is very solicitous of
19 rates. We definitely do not want consumers' rates to go
20 up as a result of participation in this program.

21 But there is -- there does appear to be an
22 attempt by the General Assembly to make available
23 additional renewable resources on the grid which do
24 benefit our state and benefit the economy of the state,

1 benefit these folks sitting over here who it appears that
2 the General Assembly was solicitous of their interest in
3 having renewable energy and being able to possibly, not
4 guaranteed cost savings, but possibly realize some
5 savings as a result of that program.

6 CHAIRMAN FINLEY: All right. Thank you, Ms.
7 Harrod.

8 MS. HARROD: Thank you.

9 CHAIRMAN FINLEY: Mr. Dodge?

10 MR. DODGE: Good afternoon, Chairman Finley,
11 members of the Commission. I'm Tim Dodge of the Public
12 Staff. I'll try to be brief in my comments as well.

13 With regard to the GSA bill credit, the General
14 Assembly, when it enacted House 589, delegated the
15 authority to the Commission to establish that bill credit
16 subject to two limitations: one, as Chairman Finley put
17 it, a ceiling on that bill credit not to exceed avoided
18 cost; and two, that all non-participating customers would
19 be neutral, neither advantaged nor disadvantaged as a
20 result of the GSA procurement.

21 In its exercise of this authority, I think it's
22 appropriate for the Commission to consider how it's
23 handled these types of establishing a value of energy
24 resources that are being procured for its customers in

1 prior proceedings.

2 In its most recent avoided cost proceeding, the
3 Sub 148 proceeding, the Commission found that properly
4 established, the avoided cost rates make the purchasing
5 utility indifferent to purchasing electric output from a
6 QF or from another source, including the utility building
7 and owning its own generating facility.

8 Like the purchase power cost from QFs the
9 utility recovers from its ratepayers through the Fuel
10 Rider, this logic also carries forward to a GSA bill
11 credit that the utilities would also seek to recover
12 through its Fuel Rider.

13 Avoided cost, and we've talked a lot about what
14 that term means, and I'll -- I'm not going try to define
15 it differently than has already been described today, but
16 I think it reflects a snapshot at a given time of what
17 energy prices are going to look like on a current and a
18 prospective basis, subject to the best information
19 available to parties at the time they make -- the
20 Commission at the time it makes that determination.

21 As we know from avoided cost proceedings over
22 the past decade that the Commission has overseen,
23 agreement on how much to rely on future forecasts and
24 market assumptions has proven challenging. In addition,

1 we've been in a very dynamic environment with regard to
2 the key inputs that would go into avoided cost
3 calculations such as forecast prices for natural gas and
4 other inputs. And so as a result of those changing
5 market prices or market fundamentals, it has proven a
6 challenge for avoided cost rates to remain reflective of
7 current energy prices over time.

8 Partly as a result of these challenges, the
9 General Assembly enacted 589 in which in addition to
10 enacting GSA and the CPRE program or CPR -- yes, CPRE
11 program, it made sweeping changes to the methods by which
12 the Commission establishes avoided cost rates, including
13 reducing the size of facilities that could qualify for
14 standard rates, the terms over which avoided capacity
15 would be paid, as well as the other inputs that the
16 Commission could -- should consider.

17 These changes enacted in House 589, as well as
18 the additional actions taken by the General Assembly in
19 its Sub 148 order last October, reduced the reliance
20 placed on longer term forecasts and other factors that
21 were creating some of the disconnect between
22 administratively determined avoided cost rates and
23 current energy prices in the market.

24 In our reply comments in this proceeding, the

1 Public Staff found that the use of administratively
2 determined avoided cost rates, as modified by the
3 Commission in its most recent proceeding, would form a
4 bas--- would form a reasonable basis on which the
5 Commission could calculate a bill credit for GSA
6 customers in a way that would leave non-participating
7 customers neutral to the implementation of the GSA
8 Program.

9 In our comments, however, we noted that while
10 GSA statute allowed for terms for the PPAs for renewable
11 energy suppliers to be as long as 20 years, the bill
12 credit was not required to be set for a fixed length --
13 for the same length as the PPA term. The Public Staff
14 believes that bill credit terms of that length would
15 expose non-participating customers to undue risk based on
16 potential forecast error and do not support that
17 position.

18 To reduce the risk of forecast error, we
19 suggested in our reply comments that the initial term of
20 the bill credit should not exceed 10 years and be subject
21 to periodic refreshes or resets to ensure that the rate
22 stayed in alignment with current information on energy
23 prices. This remains our current position.

24 We also suggested a few other options that the

1 Commission might consider, one of which was basing the
2 bill credit on an actual incremental generation cost to
3 the utility similar to the Georgia Ready Program that's
4 very similar to the Wal-Mart proposal that's been
5 discussed today. We believe that the stipulation entered
6 into between Wal-Mart and Duke last month appears to be
7 generally protective of non-participating customers, and
8 we support that option also being available to GSA
9 customers.

10 In addition to the bill credit, the non-
11 participating customers, as Commissioner Clodfelter
12 mentioned, there could be impacts to those non-
13 participating customers as a result of interconnection
14 and integration of those resources in the utility's grid.

15 The Public Staff, in our reply comments --
16 excuse me -- in our initial comments, recommended that
17 the PPA used in the GSA context include reasonable
18 control instructions and system emergency instructions
19 comparable to those that are utilized in large negotiated
20 QF contracts that provide the Utilities with flexibility
21 to continue to operate the grid in a safe, reliable, and
22 efficient manner. I would note that in the Commission's
23 Sub 148 order, Footnote 15, the Commission described the
24 appropriateness of those control instructions being

1 included in negotiated QF contracts.

2 In conclusion, the Public Staff recommends that
3 the Commission establish a bill credit and provide terms
4 that will give effect to the General Assembly's intent in
5 enacting this voluntary program, but give full
6 consideration to the measures we just -- I have discussed
7 to ensure that non-participating customers remain held
8 harmless as a result of enactment of this program.

9 I do have a couple follow ups, too, from a
10 couple Commissioners I'd like to note real quick as well.

11 Commissioner Clodfelter, so you raised a
12 question about you can arguably have two different
13 interpretations of what avoided cost means. And I think
14 looking at -- if you look avoided cost and how they're
15 determined and calculated by the Commission in those
16 administrative proceedings, there are a number of
17 differences in how avoided cost are calculated based on
18 the term of the contract, based on the size of the
19 facilities, and based on, in some cases, the resource
20 types that are receiving those rates.

21 So if you look, for example, at a 10-year fixed
22 rate for a small hydro facility, it's going to look very
23 different than an as-available rate that may be available
24 to a non-hydro QF. So I think just in the context of how

1 the Commission has determined avoided cost, they're not
2 necessarily -- there's not one rate. There's different
3 factors and considerations that can go into that
4 calculation.

5 I would also state that if you -- if you kind
6 of take this -- Mr. Styers, I believe, was alluding to
7 this, too. If you look at the Wal-Mart use of day-ahead
8 Lambdas as a reflection of the current measure of avoided
9 cost, so on a short-term basis that provides a short-term
10 proxy or measure of those avoided cost, administratively
11 determined avoided cost can then be viewed in more a
12 prospective fashion, but the Commission, at the time it
13 makes the determination that the bill credit is
14 reasonable and protective of non-participating customers,
15 says at this time, based on the best information we have
16 available, both of these options appear to be protective
17 of non-participating customers. So I would characterize
18 it in that regard. They're not necessarily going to
19 true-up at some point in the future. They can't true-up
20 in the future. We know an administratively determined
21 one, the forecast, we know that those will be wrong. We
22 don't know if they'll be above. We don't know if they'll
23 be below. But based on the information we have now, we
24 think those would be equivalent.

1 And then Commissioner Mitchell, you asked about
2 the difference between the original Rider GS Program
3 enacted in -- or excuse me -- approved by the Commission
4 in 2013 and the fact that it was limited to new capacity,
5 that certainly was a distinction that was made in the
6 statutes, but unfortunately, I'm not aware of that being
7 taken into consideration in the development of the bill
8 credit mechanism for Rider GS. Happy to answer any
9 questions.

10 COMMISSIONER CLODFELTER: Thank you for your
11 explanation to the question that was puzzling me earlier.
12 That's very helpful. Thank you.

13 I want to hear your answer to the other
14 question that's confounding. This is a poorly written
15 statute, and that's why it creates these kind of
16 questions. So --

17 CHAIRMAN FINLEY: Commissioner Clodfelter, you
18 and I agree on something.

19 COMMISSIONER CLODFELTER: Yeah. And Mr. Dodge
20 has had his turn in the shark tank down the street, too,
21 so he knows exactly what I'm talking about.

22 So the administratively determined avoided cost
23 for a megawatt is \$100, just a round number.

24 MR. DODGE: Sure.

1 COMMISSIONER CLODFELTER: And that's really
2 what the price is of bringing these assets. That's the
3 price to the ratepayers for bringing these assets onto
4 the system because the actual cost of the transaction is
5 a wash. You can't say the participant pays whatever the
6 PPA price is --

7 MR. DODGE: Right.

8 COMMISSIONER CLODFELTER: -- so that washes.

9 MR. DODGE: Yeah.

10 COMMISSIONER CLODFELTER: So the bill credit is
11 really the cost of bringing new assets into the system.
12 And so it's \$100, as administratively determined in
13 whatever proceeding. It's the most pertinent one at the
14 time. And in the parallel CPRE program, the bids come in
15 at an average weighted price of \$95 per megawatt. So the
16 Company says, gee, I've got to charge the ratepayers a
17 hundred bucks, that's the amount of the bill credit I'm
18 giving in order to bring these assets into the system. I
19 could have -- I could have procured that same asset for
20 95 bucks through this process that I could use over here.
21 I have the option to use this process up here to get that
22 asset. Why isn't the non-participating ratepayer
23 disadvantaged to the tune of five bucks a megawatt?

24 MR. DODGE: So Chairman Clodfelter, before I

1 answer your question --

2 COMMISSIONER CLODFELTER: I'm not the Chairman.

3 MR. DODGE: Actually, before I answer your
4 question, I just want to, with all due respect, my
5 colleague in the back who was one of the legislative
6 staffers that worked on drafting House 589, it was a --
7 it was drafted by a stakeholder group as a --

8 COMMISSIONER CLODFELTER: -- it was drafted by
9 a legislator and not by staff.

10 MR. DODGE: I think staff did their best to
11 make sense of a challenging piece of legislation.

12 With regard to your question about the CPRE and
13 the difference between a bill credit -- the \$5 difference
14 in bill credit, again, I think several of the other
15 Intervenors have made this point today. Looking at CPRE,
16 I think you are talking about while they are similar,
17 they are not the same two programs. You're not procuring
18 the same megawatt of resource and the same level of
19 functionality for the utility over the term of that asset
20 there. The resources will be economically dispatchable
21 pursuant to the statute under CPRE.

22 The way the program is being implemented right
23 now includes grouping of some of the interconnection
24 costs that maybe socialized, and that may allow projects

1 that otherwise would be hung up in the serial queue to be
2 able to move it in a different -- in a more timely
3 fashion. There's a 20-year levelized term for the PPA --
4 or excuse me, not levelized -- a 20-year term for the
5 PPAs under CPRE.

6 So I think they are different resources, and so
7 while the Public Staff is certainly supportive of market-
8 based options for looking at how we might determine
9 avoided cost, I think the CPRE isn't necessarily -- it's
10 not an apples-to-apples comparison at this time.

11 COMMISSIONER CLODFELTER: Thank you. That is
12 helpful. I just, again, say that the use of this
13 sweeping language, neither advantaged nor disadvantaged,
14 is -- that kind of generic equitable language, you know,
15 it's a very broad equitable standard, and you're giving
16 me program nuances and I've got to -- I guess what we've
17 got to decide is are those program nuances sufficient to
18 hang our hat on when we're applying what is a very broad
19 standard of equity, neither advantaged nor disadvantaged.
20 Those are not good technical drafting terms. Yeah.
21 Thank you.

22 COMMISSIONER BROWN-BLAND: Mr. Dodge, do you
23 agree, as I think I've heard the Company mention or
24 include in their filings, that there will be costs that

1 are appropriate to be passed through the fuel clause?

2 MR. DODGE: Yes. I think the cost -- the bill
3 credit that's borne -- will be borne by non-participating
4 customers, but that bill credit would be reflective of
5 the system -- the energy being added to the system, you
6 know, as a system resource, so that's basically the price
7 that they would be paying for that additional power being
8 added as a system resource.

9 COMMISSIONER BROWN-BLAND: And so if it passes
10 through the fuel clause, is that consistent in terms of
11 holding a non-participating customer harmless or is the
12 non-participating customer disadvantaged?

13 MR. DODGE: I think if you look at from --
14 under the Wal-Mart proposal, looking at a day-ahead
15 Lambda, if you look at that being the next marginal unit,
16 the next megawatt that would have to be purchased at that
17 price, if that's the bill credit, the value that's being
18 passed on would be -- would hold the non-participating
19 customers harmless. It would be basically equal to what
20 they would have otherwise had to pay to procure that --
21 that megawatt of energy. And under the administratively
22 determined avoided cost rates, I would argue that it's
23 the same. While, again, the way you view avoided cost
24 may be different based on the time frame we're talking

1 about, I would say that in both cases that the cost
2 that's recovered through the fuel clause would reflect
3 that next megawatt hour that's being provided.

4 COMMISSIONER BROWN-BLAND: And so the non-
5 participating customer, in your view, would be held
6 neutral, same result?

7 MR. DODGE: Correct.

8 COMMISSIONER BROWN-BLAND: All right. Thank
9 you.

10 COMMISSIONER MITCHELL: Mr. Dodge, one of the
11 Public Staff's recommendations for the bill credit
12 mechanism is the actual incremental generation cost. And
13 in your comments, you discuss the Georgia Power Program
14 which was fully subscribed. Can you tell us -- explain
15 to us why the incremental cost approach worked in that --
16 for the Georgia Power Program and why we're hearing
17 participants say it won't work here or at least what has
18 been proposed isn't sufficient or workable?

19 MR. DODGE: Yeah. I'm -- unfortunately,
20 Commissioner Mitchell, I'm not extremely familiar with
21 the Georgia program. We did review it as part of
22 preparing our comments. There are some differences, as
23 Mr. Smith alluded to in his comments. The Georgia
24 program, I believe, has 30-year terms. There is an opt-

1 out provision at some point during that term, but it's --
2 I think we viewed it as a -- as somewhat similar to an
3 option that could be looked at here in North Carolina and
4 would be -- would provide a more precise or real-time
5 kind of measure of those costs that are being avoided.
6 That was our -- the basis for our support.

7 It did -- obviously, as several parties have
8 indicated, it was fully subscribed, and so it appeared
9 that that -- it was a good indication of market interest
10 in that in terms of maybe being a viable alternative for
11 a bill credit for GSA customers.

12 COMMISSIONER MITCHELL: Okay. Thanks.

13 CHAIRMAN FINLEY: Thank you, Mr. Dodge. Duke?

14 MR. JIRAK: I know we're a little over time, so
15 I'll try to make this as brief as possible.

16 CHAIRMAN FINLEY: You've got four minutes.

17 MR. JIRAK: What's that?

18 CHAIRMAN FINLEY: Go ahead.

19 MR. JIRAK: I want to respond to sort of a
20 general allegation comment that was made by a number of
21 representatives of Intervenors.

22 Mr. Trathen at one point says he thought that
23 perhaps Duke was siphoning off some money from this
24 program to shareholders, but he couldn't determine where.

1 Ms. Kemeraite disagreed with our characterization of
2 guaranteed cost savings and says there could potentially,
3 under our program, be benefit to non-participating
4 customers. Mr. Smith sort of vaguely alleged there could
5 be some double recovery.

6 It sounded like somehow Duke has some magic
7 that's keeping people from understanding how this program
8 works, but while this is a complex program, the numbers
9 are what they are, and Duke today is the only party who
10 has brought specific examples of the actual bill credits
11 to walk you through an illustration of how the price --
12 where the costs go and how those costs flow. And so I
13 think we need to focus on that just real briefly one last
14 time to make sure we're clear, because the numbers are
15 there, and if we take a look at the numbers, we'll see
16 where the costs really are coming from. So I have one
17 more illustration to walk through.

18 So, again, it is a complex program, but when
19 you look at the numbers, it's very clear to see what the
20 ultimate cost of these megawatt hours are to non-
21 participating customers. So earlier I walked you all
22 through an illustration, hypothetical illustration of the
23 Wal-Mart settlement. What we have here on paper is the
24 hypothetical illustration of how the Intervenor

1 recommendation would work if you were to fix the bill
2 credit at the 20-year avoided cost. So this is a
3 hypothetical showing a 20-year avoided cost bill credit,
4 and I want to show how the dollars flow under that
5 arrangement.

6 So if you turn to the second page, that's where
7 the illustration is provided. Okay. So, again, in this
8 scenario we were assuming a 20-year GSA service
9 agreement, a 20-year PPA with a negotiated price of \$37,
10 and a bill credit that's set at a 20-year avoided cost,
11 and for this hypothetical we're going to assume that that
12 avoided cost is \$52. Again, this is just illustrative.

13 If the GSA customer pays \$37, but receives a
14 bill credit of \$52, the net impact is a \$15 reduction on
15 the customer bill. In every hour in which that resource
16 is generating a megawatt hour, they're getting a \$15
17 credit on their bill. That is guaranteed cost savings.
18 That's going to be the outcome in every single hour in
19 which that generating resource puts out a megawatt hour
20 of energy. That's why we can say that would be
21 guaranteed cost saving. There's no risk in that
22 arrangement.

23 Now, again, a net reduction on the customer
24 bill, that means less revenue from the GSA customer,

1 which is a cost to non-participating customers. We're
2 taking in less in fuel costs from one customer. Because
3 fuel costs are passed through, someone else is going to
4 make up that \$15.

5 In addition to this \$15 credit that's being
6 given, the \$15 net credit, Duke has to pay that renewable
7 supplier under the terms of the PPA, so Duke writes a
8 check for \$37 to the GSA renewable supplier under the
9 terms of the PPA. So when you add together the cost of
10 that PPA, plus the credit, the net credit that's on the
11 customer's bill, you get to a net cost to non-
12 participating customers for that megawatt energy of \$52.
13 That's a \$37 payment, PPA payment, plus the \$15 net
14 credit.

15 So, again, it's a -- it's a somewhat complex
16 program, but those are the numbers. And under a proposal
17 which you have a fixed bill credit that's above the
18 negotiated rate, that is a guaranteed cost savings in all
19 hours, and non-participating customers are going to bear
20 those costs ultimately. It's really, in the end, that
21 simple.

22 The costs of the program are passed through,
23 and in the end, you know, Duke is not here to have a
24 dispute about these issues just for the fun of it. We

1 are here because we believe truly that when the General
2 Assembly said non-participating customers should be held
3 neutral, they meant it. And so, again, while we're
4 indifferent in some ways to the program because the cost
5 passed through -- recovery that we're authorized to have
6 under the fuel clause is going to keep us whole in some
7 respects, we think it's important that non-participating
8 customers are held neutral as the statute requires.

9 Now, I want to speak to a couple small issues
10 before I close. One is, obviously, the Department of
11 Defense did not elect to come here today, and so some
12 folks have sort of spoke on their behalf, and I don't
13 want to presume to speak on their behalf, either, but I
14 will make the general observation that they were very
15 clear in their comments that the reason they are choosing
16 not to participate in the GSA Program is because they're
17 looking for two things in any program like this. They
18 want cost savings and energy resiliency. That's in bold
19 print on the last page of their comments. They want cost
20 savings and energy resiliency.

21 And the reality is this -- we've talked about
22 cost savings, and from our perspective, guaranteed cost
23 savings for participating customers means that non-
24 participating customers are not held neutral. So that's

1 one issue.

2 But the other obvious issue is resiliency. So
3 they're looking for a program that offers them
4 resiliency, meaning a facility that's located on their
5 base and is able to island to their facility in times of
6 outage. Unfortunately, that's obviously not what the GSA
7 Program was structured to provide for. It's really, it's
8 sort of a square peg in a round hole, what they're
9 looking for here in terms of program design. So I just
10 make the general observation that while Duke would have
11 preferred to have their involvement, ultimately, the
12 objectives they're looking for don't really conform to
13 the program statutes. That's just the unfortunate
14 reality of a mismatch between what they're looking for
15 and what the statute says we're authorized to provide.

16 Two more small points. Mr. Dodge, on behalf of
17 the Public Staff, basically addressed your question,
18 Commissioner Clodfelter, in terms of the, you know, the
19 use of multiple different forms of avoided cost. And if
20 that explanation made sense to you, I won't belabor that
21 point other than to observe that that's also consistent
22 with CFR regulations and how they define avoided cost and
23 that they allow for avoided cost to be determined either
24 at the time of contracting or at the time of generation

1 production. So we think it can fit. We think both
2 structures can fit within the terms of the statute.

3 So in closing, I would just redirect your
4 attention to my initial handout which showed very clearly
5 the substantial cost differences in the total cost of
6 this energy depending on what structure we go with and
7 what structure this Commission approves.

8 At one point, I don't recall, I think it was --
9 I think it was the representative for UNC made the
10 observation that we're trying to get as close to avoided
11 cost as possible. And respectfully, I just feel like
12 that we disagree with that pretty emphatically because as
13 you look at this lineup of costs, we see that the real
14 price that customers could procure renewable energy at is
15 more reflective of the market price for energy, and to
16 pay some greater price than that for that energy is not
17 holding non-participants neutral. So with that, I'll
18 take any questions.

19 CHAIRMAN FINLEY: All right. Thank you, sir.
20 This has been helpful to the Commission, at least some of
21 us anyway. I think it's been helpful for the Commission.
22 I hope it's been helpful to the participants.

23 MR. STYERS: Could I have just -- Commissioner
24 Clodfelter tossed out a question to Ms. Kemerait. Can I

1 have 60 seconds, one minute, for the policy reasons why I
2 think avoided cost work? Just 60 seconds, I promise you.

3 The first is what Ms. Harrod said, the
4 Commission -- the Legislature is not going to create a
5 nullity. There is a RECs market out there. If we wanted
6 just to buy RECs, we would just buy RECs. But instead
7 of doing that, the General Assembly created a program
8 instead of us just going out and buying RECs.

9 Second, if they wanted it just to be part of
10 the CPRE program, they could have made the CPR program
11 for 30 to 160 megawatts and said, you know, these
12 customers have right of first refusal and built it into
13 the CPRE program. They didn't do that. They created a
14 separate program.

15 And third, you know, challenges, why the
16 administrative avoided cost is the right number, you
17 know, is in part we live in a world of a lack of
18 transparency and a world of lack of clairvoyance, and as
19 a result of that, with a monopoly utility --

20 CHAIRMAN FINLEY: Mr. Styers, your time is up.

21 MR. STYERS: -- we think --

22 CHAIRMAN FINLEY: You're sort of -- you're sort
23 of surrebuttal, and I don't --

24 MR. STYERS: Thank you.

1 CHAIRMAN FINLEY: -- think that's not
2 appropriate --

3 MR. STYERS: Okay.

4 CHAIRMAN FINLEY: -- not appropriate. So we
5 appreciate your participation in this case. It's been
6 helpful to the Commission. You know, there's been some
7 complaint here about somebody was not invited to dance
8 before somebody else. You know, if I were -- big
9 companies here and big participants, and I wouldn't let
10 that interfere with my ability to talk to Duke, and to
11 the extent that you all can work out a resolution of
12 these cases, I think they would be happy to talk to you
13 about it and --

14 MR. IVES: No. No, they're not, sir.

15 CHAIRMAN FINLEY: well, we'll tell them to talk
16 to you.

17 MR. IVES: Yeah, yeah. I -- it's going to take
18 some prodding from you, sir.

19 CHAIRMAN FINLEY: Well, that's what I'm doing.

20 MR. IVES: Thank you.

21 CHAIRMAN FINLEY: So listen to me, okay? Let's
22 see what you can do. Thank you very much.

23 MR. STYERS: Thank you.

24 (The hearing was adjourned.)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

C E R T I F I C A T E

I, Linda S. Garrett, Notary Public/Court Reporter,
do hereby certify that the foregoing hearing before the
North Carolina Utilities Commission in Docket No.
E-2, Sub 1170 and E-7, Sub 1169, was taken and
transcribed under my supervision; and that the
foregoing pages constitute a true and accurate
transcript of said Hearing.

I do further certify that I am not of counsel for,
or in the employment of either of the parties to this
action, nor am I interested in the results of this
action.

IN WITNESS WHEREOF, I have hereunto subscribed my
name this 17th day of September, 2018.



Linda S. Garrett

Notary Public No. 19971700150

FILED

SEP 18 REC'D

**Clerk's Office
N.C. Utilities Commission**