

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1314
DOCKET NO. E-2, SUB 1315
DOCKET NO. E-7, SUB 1288
DOCKET NO. E-7, SUB 1289

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1314)	
DOCKET NO. E-7, SUB 1289)	
)	
In the Matter of)	
Petition of Duke Energy Progress, LLC,)	
and Duke Energy Carolinas, LLC,)	
Requesting Approval of Green Source)	
Advantage Choice Program and)	ORDER REQUIRING UPDATE ON
Rider GSAC)	STAKEHOLDER ENGAGEMENT
)	AND EFFORTS TO RESOLVE
DOCKET NO. E-2, SUB 1315)	OUTSTANDING ISSUES
DOCKET NO. E-7, SUB 1288)	
)	
In the Matter of)	
Petition of Duke Energy Progress, LLC,)	
and Duke Energy Carolinas, LLC,)	
Requesting Approval of Clean Energy)	
Impact Program)	

BY THE CHAIR: Based upon the entire record of the above-captioned proceedings, the Chair finds good cause to require that Duke Energy Progress, LLC (DEP), and Duke Energy Carolinas, LLC (DEC; together with DEP, Duke) provide an update regarding recent stakeholder engagement and related efforts to resolve the outstanding issues between the parties to the above-captioned dockets.

GSA CHOICE PROGRAM

On January 27, 2023, Duke filed a petition in Docket Nos. E-2, Sub 1314 and E-7, Sub 1289 requesting Commission approval of the Green Source Advantage Choice Program (GSA Choice Program) tariffs. The GSA Choice Program is designed to supplant the current Green Source Advantage (GSA) Program and GSA Bridge Program. As proposed, the GSA Choice Program would allow large-load commercial and industrial customers to contract with Duke to provide Clean Energy Environmental Attributes (CEEAs), which are Renewable Energy Certificates (RECs) bundled with carbon

emission attributes associated with the generation from both Duke-owned generation assets and third-party-owned generation assets that have a purchase power agreement (PPA) with either DEP or DEC, or through a third-party agreement between DEP or DEC, a renewable developer, and the customer in the same manner as the legacy GSA Program. The GSA Choice Program offers a non-energy storage option and an energy storage or other clean energy facility option. The energy storage option would assist customers that want to virtually time-align their energy consumption with renewable energy output by shifting solar energy produced during daylight hours to non-daylight hours. Duke states that it is implementing an enterprise-wide internal tracking system for CEEAs that would be used to facilitate tracking and authentication of the carbon reduction attributes, but that it does not plan to have a third-party certify the CEEAs. Duke further states that the GSA Choice Program is one of several new programs it will propose to fulfil the directives of Section 5 of S.L. 2021-165 (HB 951) to offer voluntary renewable energy programs.

On February 9, 2023, the Commission issued an order setting the timeframe in which interested persons could petition the Commission to intervene and parties could file comments on Duke's GSA Choice Program proposal.

Through various orders, the Commission permitted the intervention of the following parties: the Clean Energy Buyers Association (CEBA); the Carolina Industrial Group for Fair Utility Rates II and the Carolina Industrial Group for Fair Utility Rates III (together, CIGFUR); the Carolina Utility Customers Association, Inc. (CUCA); the North Carolina Sustainable Energy Association (NCSEA); the Southern Alliance for Clean Energy (SACE); Google LLC (Google); the Carolinas Clean Energy Business Association (CCEBA); and the United States Department of Defense and all other Federal Executive Agencies (DoD/FEA). The intervention of the Public Staff – North Carolina Utilities Commission (Public Staff) is recognized pursuant to N.C.G.S. § 62-15(d) and Commission Rule R1-19(e). The North Carolina Attorney General's Office (AGO) is afforded intervention as of right on behalf of the using and consuming public pursuant to N.C.G.S. § 62-20.

On April 25, 2023, the following parties filed initial comments on Duke's GSA Choice Program proposal: CIGFUR, CEBA, Google, DoD/FEA, the Public Staff, CUCA, the AGO, and filing jointly, SACE, NCSEA, and CCEBA.

On June 23, 2023, the following parties filed reply comments: CEBA, the Public Staff, CIGFUR, DoD/FEA, Google, CUCA, Duke, and filing jointly, SACE and NCSEA. CCEBA filed a letter in lieu of reply comments.

Also, on June 23, 2023, while not having filed a petition to intervene or being allowed to intervene in the dockets, the Southeast Sustainability Directors Network (SSDN)¹ filed a letter regarding Duke's GSA Choice Program proposal (SSDN Letter).

In regard to the issue of regulatory surplus, in initial and reply comments, CEBA, Google, DoD/FEA, the Public Staff, CUCA, the AGO, SACE, NCSEA, and CCEBA noted that Duke's GSA Choice Program proposal does not result in new, additional renewable energy resources that are "surplus" to the requirements of HB 951. In joint initial comments, SACE, NCSEA, and CCEBA argued that HB 951 requires that the GSA Choice Program achieve regulatory surplus and requests that the Commission deny any program that does not include regulatory surplus. SACE, NCSEA, and CCEBA requested that the Commission direct Duke to work with stakeholders to refine the program to achieve regulatory surplus. Joint Initial Comments at 2.

The Public Staff stated in its initial comments:

In general, the Public Staff believes that the lack of regulatory surplus inherent to this proposed program could open the program and its participants to claims of "greenwashing," whereby entities claim they are supporting renewable energy without meaningfully contributing to the incremental procurement of renewable energy. . . . The Companies defend the program's lack of regulatory surplus by referencing the physical limit to annual interconnection of new generation resources, reiterating arguments made during the Carbon Plan proceedings. The Companies stated in discovery that procuring additional solar that cannot be interconnected in a timely fashion will result in excess solar PPAs that could have been procured at a later date, and possibly at lower prices. The Public Staff disagrees for two reasons.

. . .

The Public Staff is supportive of appropriate interconnection limits in the Carbon Plan modeling but does not believe those limits should be used to justify a voluntary renewable energy purchase program with no additionality.

Initial Comments of the Public Staff at 14, 15.

In initial and reply comments, several intervenors stated that regulatory surplus is necessary for third-party certification of the CEEAs. For example, Google stated that regulatory surplus is necessary for such certification and that a lack of additionality could lead to improper double counting of carbon reduction benefits. Google's Reply Comments at 2-3.

¹ The SSDN Letter states that the SSDN is a network of local government sustainability practitioners representing over 100 city, county, and tribal governments across the Southeast, including 28 local governments in North Carolina. SSDN Letter at 1.

In its reply comments, CIGFUR filed a request for procedural relief (Request for Procedural Relief) noting that a significant outstanding issue is the regulatory surplus issue. Procedural Relief and Reply Comments at 2. CIGFUR requested that the Commission “temporarily stay these dockets for a limited, time-certain period to allow the parties to continue working in good faith in hopes of resolving certain outstanding issues[.]” *Id.* at 3, 8.

On June 23, 2023, Duke filed reply comments. In regard to the issue of regulatory surplus, Duke stated that HB 951 does not require regulatory surplus for the GSA Choice Program, and that the practical impacts of requiring regulatory surplus have not been fully considered by the intervenors, as regulatory surplus would cause significant impacts to Duke’s system and would be expensive. Duke disputed that the proposed program would result in “greenwashing” or double-counting of CEEAs.

On August 1, 2023, Duke filed a response to CIGFUR’s Request for Procedural Relief. Duke recommended that the Commission approve Duke’s GSA Choice Program in part and grant the requested stay only to the extent necessary for the parties to discuss the remaining contested issues.

On August 9, 2023, SACE and NCSEA filed a response to CIGFUR’s Request for Procedural Relief and Duke’s response thereto, and on August 11, 2023, CCEBA filed a letter in response to CIGFUR’s Request for Procedural Relief and Duke’s response. CCEBA’s letter stated that “CCEBA therefore urges the Commission to grant CIGFUR’s request for procedural relief as to the GSAC dockets and order Duke to continue discussions with Intervenor until a date certain, with all parties to address any unresolved issues through final sur-replies.” CCEBA August 11, 2023 Letter at 3 (pages unnumbered).

On August 28, 2023, Duke filed a supplemental reply letter addressing the August 9 and 11 comments of SACE, NCSEA, and CCEBA.

On September 5, 2023, SACE and NCSEA filed a motion requesting that the Commission hold a technical conference on the issue of regulatory surplus “and any related issues it deems proper before rendering decisions on Duke’s proposed GSAC and CEI programs or any other H951 voluntary customer programs Duke might propose.” Motion for a Technical Conference at 20.

On September 13, 2023, CIGFUR filed a letter responding to SACE and NCSEA’s motion for a technical conference (CIGFUR Letter). The CIGFUR Letter stated that CIGFUR “remains CIGFUR’s goal to work together with all parties towards what CIGFUR hopes will be a mutually-agreeable consensus position to resolve the issue of regulatory surplus.” CIGFUR Letter at 1. However, CIGFUR stated that it was “not convinced that a technical conference would help to resolve or otherwise clarify the issue of regulatory surplus and its potential implications for customers who elect to participate in the GSA-C Program.” *Id.* at 2.

On September 15, 2023, Duke filed its response to SACE and NCSEA's motion for a technical conference, which stated that "[Duke], the Public Staff, and CIGFUR are all committed to engaging in further discussions regarding Regulatory Surplus Tracks between now and November 15 and will keep the Commission apprised of the same." Duke Response to Joint Motion for a Technical Conference at ¶ 5.

Finally, on October 4, 2023, SACE and NCSEA filed comments in support of the motion for a technical conference.

CEI PROGRAM

On January 27, 2023, Duke filed a petition in Docket Nos. E-2, Sub 1315 and E-7, Sub 1288 requesting Commission approval of the Clean Energy Impact Program (CEI Program). The CEI Program would allow customers to reduce their carbon footprint or support renewable energy by purchasing CEEAs. Duke states in its petition that the CEI Program is one of several new programs it will propose to fulfil the directives of HB 951 to offer voluntary renewable energy programs.

On February 9, 2023, the Commission issued an order setting the timeframe in which interested persons could petition the Commission to intervene and parties could file comments on Duke's CEI Program proposal.

Through various orders, the Commission permitted the intervention of the following parties: NCSEA, SACE, and CCEBA. The intervention of the Public Staff is recognized pursuant to N.C.G.S. § 62-15(d) and Commission Rule R1-19(e). The AGO is afforded intervention as of right on behalf of the using and consuming public pursuant to N.C.G.S. § 62-20.

On April 25, 2023, the following parties filed initial comments on Duke's CEI Program proposal: the Public Staff, the AGO, and filing jointly, SACE, NCSEA, and CCEBA.

On June 23, 2023, the following parties filed reply comments: the Public Staff, Duke, and filing jointly, SACE and NCSEA. CCEBA filed a letter in lieu of reply comments.

The Chair notes that the dispute surrounding regulatory surplus and certification of CEEAs described above in the section on the Duke's GSA Choice Program proposal overlaps with the Duke's CEI Program proposal. Accordingly, the Chair finds good cause to require that Duke provide an update regarding recent stakeholder engagement and related efforts to resolve the outstanding issues between the parties in the above-captioned dockets.

IT IS, THEREFORE, ORDERED as follows:

1. That on or before February 27, 2024, Duke shall file its efforts to resolve the outstanding issues between the parties since September 15, 2023, and further forecast if and when it anticipates a resolution of the outstanding issues; and

2. That, to the extent that any party disputes Duke's characterization of its efforts to resolve the outstanding issues or its estimation of an anticipated resolution, those parties may file a letter with the Commission describing the matters in dispute on or before March 1, 2024.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of February, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Tamika D. Conyers". The signature is written in a cursive style with a large initial 'T' and 'C'.

Tamika D. Conyers, Deputy Clerk