STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 1170
DOCKET NO. E-7, SUB 1169

In the Matter of Petition of Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, Requesting Approval of Green Source Advantage Program and Rider GSA to Implement G.S. 62-159.2	)))))	JOINT COMMENTS OF APPLE INC. AND GOOGLE LLC

Apple Inc. and Google LLC (collectively, the "Customer Intervenors"), by and through their undersigned counsel, respectfully submit these comments pursuant to the Commission's *Order Establishing Proceeding to Review Proposed Green Source Rider Advantage Program and Rider GSA* issued on January 26, 2018 and in response to *Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's Petition for Approval of Green Source Advantage Program and Rider GSA to Implement N.C. Gen. Stat. § 62-159.2* (the "Application") filed by Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP" and together with DEC, "Duke") on January 23, 2018.

BACKGROUND

On December 19, 2013, the Commission approved an application filed by DEC that sought approval of a pilot program to "enable certain nonresidential customers to elect to displace all or a portion of the energy supplied . . . with procurement of power . . . from renewable energy resources." *Order Approving Rider*, Docket No. E-7, Sub. 1043; *see also Application/Petition for Approval of Rider GS (Green Source Rider) Pilot*, Docket No. E-7, Sub. 1043. This program expired in December 2016, *see Final Report on Implementation of Pilot Program*, Docket No. E-7, Sub. 1043, but was renewed, in

modified form, by the General Assembly in 2017. *See* Session Law 2017-192, House Bill 589, at Sec. 3.(a).

The modified renewal of the green source rider program requires certain electric public utilities to "file with the Commission an application requesting approval of a new program applicable to" certain military installations, the University of North Carolina, and "other new and existing residential customers with either a contract demand (i) equal to or greater than one megawatt (MW) or (ii) at multiple service locations that, in aggregate, is equal to or greater than five megawatts (MW)." *Id.* In response to this legislation, Duke filed the Application and initiated this matter. *See generally Application*.

COMMENTS

The Customer Intervenors are technology companies that design, develop, and sell consumer electronics, computer software and online services. In connection with these business operations, the intervenors, through their respective affiliates, own and operate one or more data centers and related infrastructure in the service territory of DEC.

The Customer Intervenors are leaders in the integration of clean energy in their operations. As they assess their current and future operations in North Carolina and elsewhere, ensuring the ability to invest in green energy is a primary and essential consideration. In this regard, a reliable and sustainable electricity supply is critical to intervenors' business operations and requires sourcing power from renewable energy. Utilizing renewable energy allows participating customers to save money, hedge against volatile fossil fuel prices, and lock in cost-effective, fixed energy rates. These benefits are especially important today, given Duke's proposed rate hikes pending before the

Commission in North Carolina and its public statements about the likelihood of further increases in the coming years.

The Customer Intervenors are strong supporters of fair, cost-competitive options for sourcing renewable energy that provide participating customers with flexibility in meeting their energy needs without affecting other ratepayers and allow customers to add new renewable energy to the grid. However, the proposed GSA rider—which was prepared, upon information and belief, with little consultation with other industry stakeholders such as the Customer Intervenors who have extensive experience in designing these programs—fails to implement the program put into place by the General Assembly. More generally, it falls short of creating a viable program which will be attractive to intensive users of energy in Duke's territory, including the Customer Intervenors—who are in the class of customers who are the intended beneficiaries of the General Assembly's enactment.

The following are the Customer Intervenors' principal concerns with the Duke's proposed implementation of the H.B. 589.

(1) Duke's proposed tariff does not provide "a range of terms" as required by House Bill 589.

As adopted, section 62-159.2 of the North Carolina General Statutes requires public utilities to "provide standard contract terms and conditions for . . . renewable energy suppliers[.]" *See* Session Law 2017-192, House Bill 589, at Sec. 3.(a). These standard terms and conditions available "shall provide a range of terms, between two years and 20 years, from which the participating customer may elect." *Id.* Duke's proposed rider tariff would allow customers either a standard term of twenty years, *Application*, para. 19, or a

self-supply option that would allow customers to "select from contract terms of 2, 5, and 20 years," *Application*, para. 12.

Duke's suggested terms satisfy neither the plain language nor the intent of the statute. First, terms of two, five or twenty years are not "a range of terms, between two years and 20 years." Instead, terms of two, five or twenty years provide precisely *one term* "between" two years and twenty years—five years. One possibility does not a range make. Second, even if one reads the statute as requiring a range of terms "from two years to twenty years," Duke's proposal falls far short of what the General Assembly intended. A "range" is defined as "a series of things in a line." *Range*, Webster's Third New International Dictionary Unabridged (2002). A series is "a group of usu[ally] three or more things or events standing or succeeding in order and having a like relationship to each other." *Series*, Webster's Third New International Dictionary Unabridged (2002). In other words, a range is a group of three or more ordered things that have a relationship to each other. It is difficult to imagine how two, five and twenty have an ordered relationship to each other.

Companies seeking to invest in renewable resources must have a sufficient planning horizon to justify the investment and to meet business objectives. In this regard, the GSA program must have additional options, such as 10 and 15 years that support different planning horizons and are more appropriate considering the dynamics of the market.

(2) The economic terms of Duke's proposed tariff are not transparent or predictable.

House Bill 589 requires public utilities to provide "standard contract terms and conditions for participating customers and for renewable energy suppliers," and mandates that "[e]ligible customers shall be allowed to negotiate with renewable energy suppliers

regarding price terms." Session Law 2017-192, House Bill 589, at Sec. 3.(a). While Duke's proposed rider tariff provides customers the option of either "negotiate[ing] a total price with a Renewable Supplier for energy, capacity and [renewable energy certificates]," *Application*, para. 39 (self-supply customers), or "request[ing] [Duke] to contract with a third party renewable energy supplier(s)," including for price, *see Application*, para. 10, 11 (standard offer), the overall net economic impact on participating customers is not readily apparent.

The pricing and credit mechanisms set out in Duke's proposed tariff are confusing and fail to provide the level of certainty that participants will need in deciding whether to seek to participate. Under Duke's proposal, it seems virtually impossible to determine, in advance, the overall economics of a particular proposal. Moreover, once a credit is determined, since that credit is tied to a determination that changes from time-to-time (average floating rates as determined by the standard offer), a participant could find that the fundamental economics of a particular arrangements change after the contract is signed. This level of uncertainty concerning a critical business term substantially undermines the programs intent and effectively makes the program unusable. In addition, the RECs associated with the renewable energy will be provided to the customers but will need to be "paid for" as part of a reduction of the bill credit, further eroding the value proposition for customers.

Related to this concern, the proposed bill credit mechanism is not clearly defined for all terms, instead relying on avoided cost or some future negotiated proxy of avoided cost as a backstop. Further complicating this approach, Section 1.(b) of House Bill 589 established a new methodology for calculating a utility's avoided cost for renewable

resources, a job traditionally left to this Commission. The Customer Intervenors are concerned by the dramatic change in methodology which effectively negates the future capacity value of renewable resources, and the impact that this change may have on long term contracts. Such dramatic changes to potential participant economics, without a transparent market mechanism for participants to systematically weigh the risk of an investment will likely have a chilling effect on participation.[1]

(3) Duke's proposal does not identify the standard contract terms and conditions applicable to the underlying commercial arrangements.

Duke GSA tariff proposal also fails to provide standard terms and conditions for all contracts. House Bill 589 clearly required Duke to provide standard contract terms and conditions for both participating customers and renewable energy suppliers. N.C. Gen. Stat. § 62-159.2(b) ("Each public utility's program application required by this section shall provide standard contract terms and conditions for participating customers and for renewable energy suppliers from which the electric public utility procures energy and capacity on behalf of the participating customer."). The intent of this requirement is that Duke identify, in advance and subject to Commission oversight and approval, the terms and conditions that apply to the commercial arrangement—both for participating customers and renewable energy suppliers. Duke's proposal fails to provide such terms, but rather simply asserts that they will be provided by Duke or that they will be set out elsewhere (e.g., a Power Purchase Agreement or the CPRE Program). But the General Assembly was seeking to ensure that participants (both customers and suppliers) were able to benefit from

[1] The Customer Intervenors would hope that the General Assembly would revisit this issue as it considers further Green Power initiatives to ensure that a renewable energy tariff reflects the actual costs of the renewable energy resource and the benefits of the service provided.

standard terms and conditions reviewed and approved by the Commission rather than be left to accept terms unilaterally dictated by Duke in its standard documents.

* * *

For the reasons stated above, the Commission should reject Duke's proposed rider. More generally, the Customer Intervenors would hope that Duke, industry stakeholders and policymakers could revisit the program envisioned by House Bill 589 with the goal of establishing a truly impactful program that would benefit large commercial users needing access to green energy sources while not burdening ratepayers nor disadvantaging Duke. Such a program should ensure that customers have access to:

- Flexible contract terms—not just terms of 2, 5 or 20 years.
- Transparent pricing and standard terms and conditions—not just pricing based on average floating rates that have not yet been established and standard terms and conditions set by Duke.
- The ability to achieve 100% renewable targets rather being subject to arbitrary caps based on peak demand.
- Additional flexibility in procurement options that allows for customers to meet their energy needs.

CONCLUSION

For the reasons discussed above, the Customer Intervenors respectfully request that the Commission enter an order rejecting Duke's petition for approval, directing Duke to create a green source rider tariff that complies with the language of House Bill 589, and encouraging Duke to work cooperatively with industry stakeholders in crafting a compliant and, hopefully, successful green rider program.

Respectfully submitted, this 23rd day of February, 2018.

Marcus W. Trathen
N.C. State Bar No. 17621
BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, LLP
Suite 1700, Wells Fargo Capitol Center
150 Fayetteville Street
P.O. Box 1800 (zip 27602)
Raleigh, NC 27601
(919) 839-0300, ext. 207 (phone)
(919) 839-0304 (fax)
mtrathen@brookspierce.com

Attorneys for Apple Inc. and Google LLC

Certificate of Service

I hereby certify that a copy of the foregoing *Joint Comments of Apple Inc. and Google LLC* has been served this day upon all parties of record in this proceeding, or their legal counsel, by electronic mail or by delivery to the United States Post Office, first-class postage pre-paid.

This the 23rd day of February, 2018.

BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, LLP

By: _____