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September 10, 2019.

Ms. Janice Fulmore  
Interim Chief Clerk  
North Carolina Utilities Commission  
430 N. Salisbury Street  
Raleigh, NC 27603

**RE: MOTION FOR CLARIFICATION**  
***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***

Dear Ms. Fulmore:

On behalf of NC Clean Energy Business Alliance (“NCCEBA”) and NC Sustainable Energy Association (“NCSEA”) collectively, we herewith submit a Motion for Clarification in the above referenced docket.

Should you have any questions concerning this Motion, please do not hesitate to contact me.

Sincerely,

/s/ Karen M. Kemerait

Karen M. Kemerait

pbb

Enclosures

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota  
Nevada New Jersey New York North Carolina Pennsylvania South Carolina Texas Washington

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**

**MOTION FOR CLARIFICATION**

NOW COME the North Carolina Clean Energy Business Alliance (“NCCEBA”) and the North Carolina Sustainable Energy Association (“NCSEA”) (collectively, “Petitioners”) and petition the Commission to issue an expedited order clarifying and ruling (1) that renewable energy projects that are part of applications to the Green Source Advantage Program (the “GSA Program”) administered by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, “Duke”) not be assessed a solar integration services charge (“SISC”); (2) that a SISC not be used to reduce the Participating Customer Bill Credit under the GSA Program; and (3) that the Participating Customer Bill Credit option equal to DEC and DEP’s five-year avoided costs rates be based on those rates as they currently exist pursuant to the Commission’s *Order Establishing Standard Rates and Contract Terms for Qualifying Facilities* issued on October 11, 2017 in Docket No. E-100, Sub 148 and not be subject to modification based on the outcome of the pending proceeding in Docket No. E-100, Sub 158.

In support of this motion, Petitioners respectfully show the Commission the following:

1. On July 27, 2017, House Bill 589 (Session Law 2017-192) was enacted into law. Part III of House Bill 589, enacted as N.C. Gen. Stat. § 62-159.2 (“GSA Statute”), required Duke to file with the Commission an application requesting approval of a new program to procure renewable energy resources on behalf of North Carolina’s major military installations, the University of North Carolina system, and large nonresidential customers.

2. On January 23, 2018, Duke filed its original plans to comply with this statutory mandate, in which it described the program called for by House Bill 589 as the “Green Source Advantage” program (“GSA Program”).

3. On January 26, 2018, the Commission issued an *Order Establishing Procedure to Review Proposed Green Source Rider Advantage Program and Rider GSA* that established a proceeding to review Duke’s proposed GSA Program, rider tariffs, and associate program details. That order also set out a schedule for the filing of petitions to intervene, initial comments, and reply comments.

4. On July 16, 2018, the Commission issued an *Order Scheduling Oral Argument*, setting the matter for oral argument on September 4, 2018. NCCEBA and NCSEA participated in the oral argument.

5. NCCEBA and NCSEA filed initial comments, reply comments, and following the oral argument, post-hearing comments.

6. Duke’s proposed GSA program came under severe criticism from almost all intervenors, in large part, because (1) the GSA Program had been unlawfully integrated into the Competitive Procurement of Renewable Energy (“CPRE”) Program

that was also created by House Bill 589, and (2) the GSA Program allowed no opportunity for Participating Customers to realize any energy savings, even if the Participating Customer were able to negotiate a purchase power agreement (“PPA”) at a cost below Duke’s avoided cost rates, and instead spread the savings to Duke’s shareholders and other non-participating customers. While the Commission concluded that the General Assembly did not require the GSA Program and the CPRE Program to be integrated, the Commission did not agree with NCCEBA, NCSEA, and the majority of intervenors on the other contested issue of the Bill Credit.

7. On February 1, 2019, the Commission issued an *Order Modifying and Approving Green Source Advantage Program, Requiring Compliance Filing, and Allowing Comments* (“GSA Program Order”), in which the Commission approved the GSA Program with a number of modifications to Duke’s original proposal. The GSA Program Order directed Duke to file a revised GSA Program consisting of revised rider leaflets, GSA Service Agreements, and GSA Program PPAs, along with a narrative explanation of the revisions to aid the Commission and other parties in determining whether the revised program complies with the Order, within forty-five (45) days of the date of the Order.

8. On March 18, 2019, Duke made its required compliance filing of a revised GSA Program.

9. On April 8, 2018, NCCEBA, NCSEA, and other intervenors filed comments addressing Duke’s compliance filing.

10. On April 18, 2019, Duke filed reply comments.

11. On June 5, 2019, the Commission issued its *Order Approving Compliance Filing*, in which the Commission concluded that Duke's revised GSA Program is consistent with the GSA Program Order and directed Duke to open the GSA Program to eligible customers within sixty (60) days of the date of the Order.

12. Duke has announced that it will begin accepting applications to the GSA Program on October 1, 2019 (more than two years after the program was mandated by the General Assembly).

13. NCCEBA and NCSEA submit that Duke's unreasonable proposals in its GSA Program resulted in a delay of over a year in the implementation of the GSA Program.

14. In order for prospective Participating Customers to submit timely applications to the GSA Program, the Participating Customers must engage in extensive and time-consuming negotiations with potential Renewable Suppliers concerning a negotiated purchase price and PPA terms and conditions, along with a number of other commercial terms regarding the relationship between the parties. In fact, Participating Customers and Renewable Suppliers have been conducting negotiations for a number of months in preparation for the opening of the GSA Program, and a number of Participating Customers have issued formal requests for proposal ("RFP") for Renewable Suppliers to submit pricing bids.

15. During the approximately eighteen months that the GSA Program was being developed and debated in proceedings before the Commission (through numerous written comments by the parties and an oral argument), Duke never stated or suggested that a SISC might be applied to the GSA Program. The parties to the GSA docket thus

have not had an opportunity to address the merits of such a proposal (and, if they had, NCCEBA and NCSEA would have objected for a number of reasons to any such proposal).

16. Similarly, during the approximately eighteen months of proceedings, there has never been any suggestion that the avoided cost rates used to determine the Bill Credit paid to Participating Customers under the GSA Program would be based on the avoided cost rates that will be established in the E-100, Sub 158 docket, rather than those that have been established in compliance with the Commission's *Order Establishing Standard Rates and Contract Terms for Qualifying Facilities* issued on October 11, 2017 in the E-100, Sub 148 docket.<sup>1</sup>

17. Since Duke never suggested that the SISC or the pending E-100, Sub 158 avoided cost rates might be applied to the GSA Program, the Commission's orders in this proceeding do not authorize either a SISC or utilization of Sub 158 avoided costs rates.

18. As a result, prospective Participating Customers and Renewable Suppliers have reasonably assumed that the purchase price they negotiate should be measured against a Bill Credit based upon Sub 148 avoided cost rates, rather than Sub 158 avoided costs with a SISC.

19. However, during the evidentiary hearing in the E-100, Sub 158 avoided cost proceeding, Duke's witnesses were asked about whether, and if so, how the proposed SISC would apply to the GSA Program. Duke's witnesses were not able to answer the

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<sup>1</sup> By contrast, the Commission, at the urging of the Public Staff, intentionally delayed the opening of Tranche 2 of CPRE to allow new avoided costs rates to be established for use as the cap on pricing under that program.

questions.<sup>2</sup> Similarly, the Public Staff's witnesses had not formed an opinion on those question, and displayed uncertainty about how such a charge might apply in the context of the GSA Program.<sup>3</sup>

20. Duke's GSA Program website<sup>4</sup> contains information about the Bill Credit options available to Participating Customers under the GSA Program. In addition, with respect to the Fixed Bill Credit based on avoided cost rates up to five years, Duke states the following:

For your convenience, posted here are estimated two-year and five-year avoided cost rates. ***These rates are subject to adjustment based on the Commission's decision in Docket No. E-100, Sub 158*** and assume a project achieves commercial operation in one year. The project-specific avoided cost will be calculated based on the project's expected output.

***Also under commission review is a Solar Integration Services Charge, included in the proposed avoided cost filing, that should be factored into price negotiations between the GSA customer and developer. This proposed charge reduces the avoided cost by \$2.39/MWh for Duke Energy Progress, and this rate will be adjusted every other year. Future adjustments will reflect changes in the cost of supporting solar generation added to the Duke Energy Progress system. Integration Services Charge will not exceed \$6.70/MWh for Duke Energy Progress during the term of the contract.***  
(Emphasis added.)

21. Upon information and belief, the two-year and five-year avoided cost rates provided in Duke's GSA Program website are based on Duke's proposed avoided cost tariff in the E-100, Sub 158 proceeding. The adjustment Duke refers to in information on its website is any modification that the Commission might make

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<sup>2</sup> NCU C Docket No. E-100, Sub 158, Hearing Transcript Vol. 3, (Duke Witness Snider stated that Duke has "not done any analysis" with respect to the application of the solar integration services ccharge to GSA).

<sup>3</sup> Docket No. E-100 Sub 158, Hearing Transcript Vol. 6, p. 430 (Public Staff Witness Thomas stated that "[a]t this time we don't have a position on . . . how [the SISC] might be applied [to the GSA Program]").

<sup>4</sup> Duke's GSA Program website can be found at: [http://www.duke-energy.com/ncgreensource?\\_ga=2.161513722.716066041.1567624011-219265742.1567624011](http://www.duke-energy.com/ncgreensource?_ga=2.161513722.716066041.1567624011-219265742.1567624011)

to those rates in a forthcoming Sub 158 order. Thus, Duke has unilaterally assumed -- and already informed the public -- that Sub 158 rates will apply to the GSA Program, even though that issue has never been presented to, let alone ruled on, by the Commission.

22. Of even greater concern, Duke is similarly assuming that its proposed SISC will apply to GSA projects even though Duke did not present such a proposal in the GSA docket and did not clearly propose it in the Sub 158 avoided cost docket.

23. Duke's unilateral, eleventh-hour decision to utilize Sub 158 avoided cost rates for the purpose of determining the GSA Bill Credit will have a highly disruptive impact on the already much delayed opening of the GSA Program. Not only will negotiating parties have to revisit the business deals they may have agreed to in the past months, but they will not have certainty as to project and program economics until the Commission issues its Sub 158 order. Since the parties filed briefs and proposed orders in that docket only very recently (on September 4, 2019), even if the Commission were to issue a highly expedited avoided cost order, Participating Customers and Renewable Suppliers will not have time to finalize negotiations by the October 1, 2019 deadline.

24. Moreover, there has been no discussion or Commission decision about whether a SISC should apply to the GSA Program, and if so, whether it should be a charge assessed on the Renewable Supplier or a decrement to the Bill Credit. If the former (which Petitioners contend would be the appropriate way to handle such a charge in other circumstances), Renewable Suppliers will have to increase the PPA price they offer to Participating Customers to compensate for having to pay the charge. Conversely,



if the charge were to be deducted from the Bill Credit, Participating Customers might be less likely to pay the PPA price quoted by the Renewable Supplier during the negotiations.

25. In addition to these issues, there is an important policy reason why Duke should not be permitted to apply Sub 158 avoided cost rates and the SISC to the GSA Program. The GSA Program was legislatively mandated to meet the demand for clean energy on the part of large nonresidential North Carolina electricity customers, including the University of North Carolina system and the military. A successful GSA Program is critical for those customers and many other large customers that have aggressive clean energy mandates, as the ability to purchase clean energy is necessary to facility siting and expansion (and thus economic development in the state). In a regulated state such as North Carolina where electricity customers are not permitted to purchase power from whomever they choose in order to procure 100% clean energy to meet their clean energy mandates, a program such as GSA (pursuant to which the monopoly utility purchases clean energy that is dedicated to the customer) offers the only means to satisfy customer demand for clean energy and avoid putting the state at a competitive disadvantage.

26. As the Commission is aware, the most complex and controversial issue in the development of the GSA Program was the design of the Bill Credit. Participating Customers and Renewable Suppliers argued vigorously that a fixed Bill Credit based on avoided cost rates calculated over at least a ten-year period was necessary to ensure robust participation in the program, and the Public Staff stated that a ten-year Bill Credit would adequately protect the interests of non-participating customers. Nonetheless, the

Commission opted to allow a Bill Credit based on avoided costs rates, fixed for a term of no greater than five years.

27. Two Commissioners dissented from the GSA Program Order, arguing that a longer term for the Bill Credit was reasonable and necessary to ensure greater program participation. A third Commissioner concurred with the majority decision, but expressed concern that it might be necessary to revisit the issue of the appropriate fixed bill credit term.

28. NCCEBA and NCSEA believe that the use of Sub 158 avoided cost rates to establish the Bill Credit and the inclusion of a SISC in the GSA Program will dramatically worsen project economics, create confusion among GSA Program participants, and further weaken this legislatively mandated program. The Commission should not allow this further degradation of the already tenuous GSA project economics, and certainly should not do so without revisiting the closely decided issue of the Bill Credit structure.<sup>5</sup>

29. NCCEBA and NCSEA request that the Commission expeditiously consider this motion, as this issue needs to be resolved as soon as possible in light of the opening of the GSA Program on October 1, 2019.

WHEREFORE, NCCEBA and NCSEA respectfully request that the Commission issue an expedited order, clarifying that the renewable energy projects that are part of applications to the GSA Program will not be assessed a solar integration services charge, and that the Participating Customer Bill Credit option equal to DEC and DEP's five-year

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<sup>5</sup> On information and belief, Petitioners understand that the levelized, blended five-year Bill Credit for GSA Participating Customers would be approximately \$35.50/MWh. When this value is compared to the approximate average CPRE Tranche 1 PPA price of \$37.00/MWh, it is obvious that customers will already face a likely increase in their energy bills by participating in the GSA Program. If the Bill Credit is reduced by 20% and then burdened by an additional 3-6% SISC, it's hard to imagine anyone participating in the program.

avoided costs rates will be based on rates that were approved in Docket No. E-100, Sub 148.

Respectfully submitted, this the 10th day of September, 2019.

FOX ROTHSCHILD LLP

/s/ Karen M. Kemerait

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**CERTIFICATE OF SERVICE**

I hereby certify that all persons on the docket service list have been served the foregoing MOTION FOR CLARIFICATION by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission to all parties of record.

Respectfully submitted, this the 10th day of September, 2019.

FOX ROTHSCHILD LLP

BY: Kar M  
Karen M. Kemerait  
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Energy Business Alliance