

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. E-2, SUB 1170
DOCKET NO. E-7, SUB 1169**

In the Matter of:)
Petition for Approval of Green Source) NCSEA’S REPLY
Advantage Program and Rider GSA to) COMMENTS
Implement N.C. Gen. Stat. § 62-159.2)

NCSEA’S REPLY COMMENTS

The North Carolina Sustainable Energy Association (“NCSEA”), an intervenor in the above-captioned proceedings, files these reply comments pursuant to the *Order Establishing Proceeding to Review Proposed Green Source Rider Advantage Program and Rider GSA* (“Scheduling Order”) issued by the North Carolina Utilities Commission (“Commission”) on January 26, 2018, as modified by the Commission’s March 13, 2018 *Order Granting Extension of Time* and April 5, 2018 *Order Granting Second Extension of Time*.¹

On January 23, 2018, Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, “Duke”) filed *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* (“Application”). Duke’s *Application* proposes a new Green Source Advantage (“GSA”) program for DEC and DEP to implement the requirements of N.C. Gen. Stat. § 62-159.2. Pursuant to the Scheduling Order, NCSEA filed its initial comments, which included two consumer statements of position authored by groups of potential GSA participants: a joint statement from Davidson

¹ One of the justifications for the second extension of time was to allow additional time “for potential further discussions between the parties to take place.” *Order Granting Second Extension of Time*, p. 1 (April 5, 2018). NCSEA notes that Duke has not engaged in any discussions regarding the GSA proposal with NCSEA, much less engaged in any discussions since the second extension of time was granted.

College, Duke University, and Wake Forest University, and a joint statement from New Belgium Brewing, SAS Institute Inc., Sierra Nevada Brewing Co., Unilever and VF Corporation. Initial comments were also filed by Apple Inc. and Google LLC (collectively, “Google and Apple”), the North Carolina Clean Energy Business Alliance (“NCCEBA”), the Public Staff – North Carolina Utilities Commission (“Public Staff”), the Southern Alliance for Clean Energy (“SACE”), the United States Department of Defense and all other Federal Executive Agencies (collectively, “DoD/FEA”), the University of North Carolina at Chapel Hill (“UNC-Chapel Hill”), and Walmart Stores East, LP and Sam’s East, Inc. (collectively, “Walmart”).

NCSEA largely agrees with the comments and concerns set forth by the other intervenors in their respective initial comments. These comments and concerns underlie an overarching concern that the program as currently proposed is not viable. The legislative intent for N.C. Gen. Stat. § 62-159.2 will only be effectuated if the GSA Program is a viable energy option for large energy customers. In their respective initial comments, the intervenors have laid out necessary conditions to allow for a financially viable implementation of this program which honors the legislative intent of the statute while still holding non-participating customers harmless.

I. THE INITIAL COMMENTS MAKE CLEAR THAT DUKE’S GSA PROPOSAL WILL NOT WORK FOR POTENTIAL PARTICIPANTS

In its initial comments, Walmart notes that it “takes electricity from one or more renewable resources in 19 states and Puerto Rico; North Carolina is not among those states.”² North Carolina is currently at an economic disadvantage because large energy

² *Comments of Wal-Mart Stores East, LP and Sam’s East, Inc.*, p. 2.

consumers such as Walmart cannot procure clean energy through Duke. Accordingly, it is critical for the GSA Program to be workable for large energy consumers for North Carolina to remain competitive with other jurisdictions. However, the initial comments in these proceedings make clear that Duke's GSA proposal fails in this regard.

NCCEBA states that "Duke's Proposed GSA Program and Rider GSA . . . utterly fail to meet the needs and expectations of . . . Eligible GSA Customers."³ Apple and Google state that Duke's proposed GSA Program "falls short of creating a viable program which will be attractive to intensive users of energy in Duke's territory, including [Apple and Google]—who are in the class of customers who are the intended beneficiaries of the General Assembly's enactment."⁴ UNC-Chapel Hill bluntly states that it "does not believe that Duke Energy's Green Source Advantage Program, as currently proposed, meets the requirements of N.C. Gen. Stat. § 62-159.2, and, as a result, the 250 megawatts of renewable energy reserved for the University of North Carolina will not be provided in a manner consistent with the intent and language of the statute unless the program is modified."⁵

In fact, the only outlier is the Public Staff, who states its belief that Duke's "filing was designed to implement the GSA Program in an efficient manner and generally includes the necessary components called for in G.S. 62-159.2."⁶ For the reasons set forth below, NCSEA strongly disagrees with the Public Staff's assertions that Duke's proposal implements N.C. Gen. Stat. § 62-159.2 in an efficient manner and that Duke's proposal includes the components required by N.C. Gen. Stat. § 62-159.2.

³ *Comments of the North Carolina Clean Energy Business Alliance*, p. 2.

⁴ *Joint Comments of Apple, Inc. and Google, LLC*, p. 3.

⁵ *Initial Comments of the University of North Carolina at Chapel Hill*, p. 1.

⁶ *Initial Comments of the Public Staff*, p. 3.

A. DUKE'S PROPOSED GSA PROGRAM PROVIDES NO ECONOMIC BENEFIT TO PARTICIPANTS AND IS COST-PROHIBITIVE

NCSEA agrees with NCCEBA that Duke failed to consider the financial ramifications of this proposal on the potential customers. As Duke outlines in its *Application*, a company seeking to participate in the program must select either via the “Standard Offer” option⁷ or the “Self-Supply” option.⁸ The Self-Supply option includes a GSA reservation fee paid by the renewable energy supplier. The proposed GSA reservation fee is “calculated in a manner substantially similar to the bid bond established in the CPRE Program Guidelines.”⁹ Additionally, both the Self-Supply and Standard Offer options include unspecified “administrative charges” and also a “GSA Product Charge” to be paid to the third-party renewable supplier by Duke (after Duke is paid by the GSA Program Customer), if applicable to the relevant GSA power purchase agreement (“PPA”).¹⁰

In both options, Duke has proposed to provide the participating GSA customer with renewable energy certificates (“RECs”) in lieu of actual generated renewable energy.¹¹ The GSA Product Charge is defined as “the product of the quantity of energy delivered to DEC or DEP by the designated GSA Facility(ies) (in kilowatt-hours (‘kWh’)) during the prior billing month *multiplied by the applicable CPRE Tranche Weighted Average Price* (in

⁷ Defined on page 4 of the *Application*, the “Standard Offer option” allows GSA customers to direct Duke to procure renewable energy via the development or procurement of new renewable energy facilities which Duke will utilize on the customers’ behalf. This option is proposed to be integrated with the competitive procurement of renewable energy (“CPRE”) program.

⁸ Defined on page 5 of the *Application*, the “Self-Supply option” allows GSA customers to negotiate with renewable energy suppliers directly regarding price terms and select the facility from which the energy and capacity is procured.

⁹ *Application*, p. 13.

¹⁰ *Id.*

¹¹ *Id.* at 5 (“Under both options, all retail customers receive the benefit of cost-effective energy and capacity, while each GSA Customer will receive the RECs generated by the respective GSA Facility(ies) developed or procured on its behalf.”); *See, NCSEA Initial Comments*, pp. 2-3 for NCSEA’s analysis and opposition of Duke’s proposal to provide RECs in lieu of procured renewable energy and capacity.

dollars-per-kWh)[.]”¹² The CPRE Tranche Weighted Average Price is equal to “the capacity-weighted average price of all proposals selected in the CPRE RFP Solicitation.”¹³ This calculation of fees falls completely outside the statutory restrictions set forth in N.C. Gen. Stat. § 62-159.2 and furthermore is an unjustified and variable set of fees that make the program untenable for potential GSA participants.

NCSEA agrees with NCCEBA that “Duke has designed the GSA Program to ensure that the GSA Customer receives no financial benefit from participating in the Program, and allocates any financial benefits instead to either Duke shareholders or non-participating customers, which is in direct contravention of the requirements of the GSA Program Statute.”¹⁴ UNC-Chapel Hill provides a specific example of how the GSA Program could have been designed in a manner to allow its participants to use clean energy and also benefit economically, noting that it “estimates that, under a Green Source Program that is, in fact, consistent with the GSA Statute, its cost savings could approach \$1.7 million annually under a 20-year contract while reducing carbon dioxide emissions from the electric power it consumes by up to 10%.”¹⁵ UNC-Chapel Hill went on to state that Duke’s proposed GSA Program would not provide any financial benefit, but instead would actually increase its costs.¹⁶

These comments cut to the core of the issue in this proceeding – Duke’s proposed GSA Program does not provide participants with an opportunity to procure clean energy in a cost-effective manner. UNC-Chapel Hill bluntly stated that its “principal objection to

¹² *Application*, p. 19 (emphasis added).

¹³ *Id.* at 15.

¹⁴ *Comments of the North Carolina Clean Energy Business Alliance*, p. 12.

¹⁵ *Initial Comments of the University of North Carolina at Chapel Hill*, p. 2.

¹⁶ *Id.* at 2-3.

Duke Energy's proposed Green Source filing is that it would not allow the procurement of renewable electricity at fair and competitive rates.”¹⁷ UNC-Chapel Hill further stated that under Duke’s proposed GSA Program it would pay “what it currently pays, plus a cost for RECs, plus an administrative fee to Duke Energy.”¹⁸ The reality of this model is that it only benefits Duke. DoD/FEA similarly stated that the program must provide some sort of cost savings for the military to utilize its set-aside within the program.¹⁹

Another necessity for the GSA Program to be attractive to potential participants is the opportunity to lock in rates and hedge against the volatility of fossil fuel prices. NCSEA agrees with Apple and Google’s statement that “[u]tilizing renewable energy allows participating customers to save money, hedge against volatile fossil fuel prices, and lock in cost-effective, fixed energy rates.”²⁰ To that end, the potential GSA participants who provided feedback on Duke’s proposed GSA Program in this docket universally declared their desire to *reduce* their costs by procuring clean energy.²¹ This is consistent with NCSEA’s long held, and advocated, belief that clean energy saves consumers money. SACE echoed the sentiment of potential participants, noting that “[o]ne of the primary goals of businesses, universities, and military installations that seek to procure renewable energy from independent power producers is the ability to establish energy price certainty

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 4.

¹⁹ *DoD/FEA Initial Comments on Proposed Rider GSA*, p. 1.

²⁰ *Joint Comments of Apple, Inc. and Google, LLC*, p. 2.

²¹ *See generally, Id.*; *DoD/FEA Initial Comments on Proposed Rider GSA*; *Initial Comments of the University of North Carolina at Chapel Hill*; *Comments of Wal-Mart Stores East, LP and Sam’s East, Inc.* *See also, NCSEA’s Initial Comments*, Attachment A (a letter authored by New Belgium Brewing, SAS Institute, Inc. Sierra Nevada Brewing Co., Unilever, and VF Corporation) and Attachment B (a letter authored by Davidson College, Duke University, and Wake Forest University).

and decrease their energy bills.”²² SACE further noted that that Duke’s proposed GSA Program does not allow participants to lock-in pricing.²³

The issues with Duke’s proposed GSA Program go beyond allowing participants to lock-in prices for clean energy to hedge against volatile fossil fuel prices. The entirety of Duke’s proposed GSA Program, including its interdependence with the CPRE program, discussed more fully in Section III.A. below, fails to provide participants with any clarity to forecast its future financial impacts. Apple and Google specifically note that “[u]nder Duke’s proposal, it seems virtually impossible to determine, in advance, the overall economics of a particular proposal.”²⁴ Duke’s proposed GSA Program appears to, at best, create higher costs for participants without providing sufficient incentives, goods, or services to substantiate the higher payments. This goes against both common sense and corporate mandates. For example, Walmart notes that, “As a general rule, when selecting renewable resources, [it] does not enter into premium structures or programs that only result in additional costs to our facilities.”²⁵

B. DUKE’S PROPOSED GSA PROGRAM DOES NOT PROVIDE AN APPROPRIATE BILL CREDIT TO PARTICIPANTS

Several of the parties providing comments on Duke’s proposed GSA Program took issue with the calculation of the bill credit that participants will receive to reflect the costs that Duke avoids by not generating electricity from its own resources because participants are being served by a third-party clean energy supplier. NCSEA agrees that “[o]ptimally, any bill credit should reflect the energy and capacity costs to the DEC or DEP systems that

²² *Initial Comments of SACE*, p. 14 (internal citations omitted).

²³ *Id.*

²⁴ *Joint Comments of Apple, Inc. and Google, LLC*, p. 5.

²⁵ *Comments of Wal-Mart Stores East, LP and Sam’s East, Inc.*, p. 2.

are avoided by the customer purchasing power from the renewable generation resource instead of from the system portfolio of resources[.]”²⁶ NCSEA agrees with NCCEBA, SACE, UNC-Chapel Hill, and Walmart that the bill credit should be set at, or very near to, Duke’s avoided cost.²⁷ Any difference between the avoided cost and the bill credit results in an inappropriate financial benefit for Duke and its shareholders and, as discussed further in Section I.G. below, an impermissible financial benefit for non-participants.

The Public Staff stated that, if avoided costs are used to set the bill credit, “the rates should be updated accordingly to reflect the most recent assumptions regarding capacity needs, fuel costs, and other factors that may reduce the exposure of ratepayers to potential overpayment due to changing market conditions.”²⁸ NCSEA agrees with the Public Staff that the most up-to-date information and avoided cost calculations should be used when establishing a bill credit. However, NCSEA believes that any bill credit based on avoided costs should be known for the life of the contract at the time that the contract is entered. As discussed above, it is important for participants to be able to lock-in pricing to provide a financial hedge against future rate increases. To the extent that the Public Staff is suggesting “floating” avoided cost rates that would be recalculated during the life of a GSA Program contract, NCSEA notes that this makes the financial calculation for participants even more difficult and would also run counter to the Commission’s previous orders regarding avoided cost calculations.²⁹

²⁶ *Id.* at 7.

²⁷ *Id.* at 11; *Comments of the North Carolina Clean Energy Business Alliance*, p. 11; *Initial Comments of SACE*, p. 11; *Initial Comments of the University of North Carolina at Chapel Hill*, p. 4.

²⁸ *Initial Comments of the Public Staff*, p. 11.

²⁹ *See, Order Establishing Standard Rates and Contract Terms for Qualifying Facilities*, p. 69, Docket No. E-100, Sub 148 (October 11, 2017) (“[T]he proposed two-year energy rate reset for facilities eligible for the standard offer rates adds an additional element of uncertainty to their ability to reasonably forecast their anticipated revenue, which may make obtaining financing more difficult than a longer term, fixed-rate PPA.”). NCSEA believes that, just as an avoided cost payment that would be recalculated every two years

C. DUKE'S PROPOSED GSA PROGRAM FAILS TO ALLOW THE NEGOTIATION OF PRICING

The General Assembly clearly intended for GSA participants to be able to negotiate pricing with renewable energy suppliers.³⁰ Several of the intervenors point out that Duke's proposed GSA Program fails to allow the negotiation of pricing. This failure is due to several fundamental flaws in Duke's proposed GSA Program. First, as discussed more fully in Sections III.A. and III.B. below, Duke inappropriately ties the proposed GSA Program to the Competitive Procurement of Renewable Energy ("CPRE") Program.³¹ Second, as discussed in Section III.C. below, Duke's proposed GSA Program is ultimately a REC procurement program.³² Even after identifying these fundamental flaws, NCSEA agrees with SACE and Walmart that any negotiation of pricing terms is at best not meaningful and at worst illusory.³³ NCSEA agrees with NCCEBA, SACE, UNC-Chapel Hill, and Walmart that the inability of potential participants to meaningfully negotiate on price violates the requirements of N.C. Gen. Stat. § 62-159.2(b).³⁴

D. DUKE'S PROPOSED GSA PROGRAM FAILS TO PROVIDE RATE CERTAINTY

As set forth in the NCSEA Initial Comments, the General Assembly directed the Commission to ensure that all non-GSA customers are "held neutral, neither advantaged

would provide uncertainty for clean energy developers and make obtaining financing more difficult, a bill credit that would be recalculated would provide uncertainty to potential GSA participants and make participation less likely.

³⁰ N.C. Gen. Stat. § 62-159.2(b) ("Eligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms.").

³¹ See generally, *Comments of the North Carolina Clean Energy Business Alliance*, p. 6.

³² See generally, *Initial Comments of SACE*, p. 9.

³³ *Id.* at 8; *Comments of Wal-Mart Stores East, LP and Sam's East, Inc.*, pp. 6-7.

³⁴ *Comments of the North Carolina Clean Energy Business Alliance*, p. 7; *Initial Comments of SACE*, p. 8; *Initial Comments of the University of North Carolina at Chapel Hill*, p. 4; *Comments of Wal-Mart Stores East, LP and Sam's East, Inc.*, pp. 6-7.

nor disadvantaged” from the impact of the GSA program,³⁵ and NCSEA believes that the program proposed by Duke will advantage non-GSA participants including, specifically, Duke and its shareholders. Duke’s effort to cap the bill credit mechanism will result in a cross-subsidization by transferring the benefits created by GSA participants to all other customers in clear violation of N.C. Gen. Stat. § 62-159.2(e). It is important to remember that the bill credit mechanism is not simply an incentive to increase participation in the GSA Program; rather, the bill credit mechanism should be designed to represent the costs that Duke does not have to incur by not running and fueling its fleet of generation resources to serve the GSA participant.

Beyond this statutory issue, Duke’s convoluted proposal creates financial uncertainty for potential GSA participants because it is based on the results of the CPRE bidding process. Potential GSA participants have cited this is one of the reasons that Duke’s proposed GSA Program is untenable. Apple and Google stated that 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*[.]”³⁶ DoD/FEA similarly refer to the pricing in Duke’s GSA Proposal as “unclear” in comparison to current tariffs.³⁷ The Public Staff stated succinctly that “[d]ue to the unknown nature of that value at this time, it makes participation in the GSA Program impractical for prospective customers.”³⁸ Walmart went so far as to state that potential

³⁵ NCSEA’s Initial Comments, p. 4.

³⁶ Joint Comments of Apple, Inc. and Google, LLC, p. 5 (emphasis added).

³⁷ DoD/FEA Initial Comments on Proposed Rider GSA, pp. 1-2.

³⁸ Initial Comments of the Public Staff, p. 11.

customers are precluded from even evaluating the GSA proposal because of the uncertain pricing structure associated with the GSA Product Charge.³⁹

E. DUKE’S PROPOSED GSA PROGRAM FAILS TO PROVIDE THE REQUIRED RANGE OF CONTRACT TERM LENGTHS

There was universal agreement amongst the commenting parties that Duke’s proposed contract term lengths do not satisfy the requirements of N.C. Gen. Stat. § 62-159.2(b), which requires “a range of terms, between two years and 20 years, from which the participating customer may elect.” NCSEA agrees with Google and Apple, NCCEBA, the Public Staff, SACE, UNC-Chapel Hill, and Walmart that the Duke GSA Program proposal fails to provide an adequate range of contract term lengths as required by N.C. Gen. Stat. § 62-159.2(b).⁴⁰ The initial comments of the parties also provide necessary context about why the contract term length is important. Apple and Google note that “Companies seeking to invest in renewable resources must have a sufficient planning horizon to justify the investment and to meet business objectives.”⁴¹ Walmart put the issue in simpler terms, stating that it “does not enter into programs with terms in excess of 15 years.”⁴² Under Duke’s proposed GSA Program, Walmart would be left with only two and five-year options which, as noted by Apple and Google, does not necessarily provide a sufficient planning horizon. NCSEA requests the Commission require Duke allow a sufficient range of terms for all GSA participants to allow potential customers to fully examine the costs and benefits of participation in the GSA Program. The initial comments

³⁹ *Comments of Wal-Mart Stores East, LP and Sam’s East, Inc.*, p. 4.

⁴⁰ *Id.* at 5; *Joint Comments of Apple, Inc. and Google, LLC*, p. 4; *Comments of the North Carolina Clean Energy Business Alliance*, p. 13; *Initial Comments of the Public Staff*, p. 14; *Initial Comments of SACE*, p. 12; *Initial Comments of the University of North Carolina at Chapel Hill*, p. 4.

⁴¹ *Joint Comments of Apple, Inc. and Google, LLC*, p. 4.

⁴² *Comments of Wal-Mart Stores East, LP and Sam’s East, Inc.*, p. 2.

make clear that the GSA Program will be unworkable for potential participants without the required range of contract term lengths.

F. DUKE’S PROPOSED GSA PROGRAM FAILS TO PROVIDE THE REQUIRED CONTRACT TERMS AND CONDITIONS

Duke was explicitly required by N.C. Gen. Stat. § 62-159.2(b) to include in its application “standard contract terms and conditions for participating customers and for renewable energy suppliers[.]” Duke blatantly disregarded this statutory requirement. Duke’s omission was noted in the initial comments of the Apple and Google, DoD/FEA, NCCEBA, the Public Staff, UNC-Chapel Hill, and Walmart.⁴³ NCSEA believes that it would be inappropriate for the Commission to approve Duke’s proposed GSA Program without first evaluating these required contract terms and conditions, and further believes that, even if they are included in Duke’s reply comments, intervenors should have an opportunity to provide comments on such contract terms and conditions prior to their approval by the Commission.

G. DUKE’S PROPOSED GSA PROGRAM UNFAIRLY ADVANTAGES NON-PARTICIPATING CUSTOMERS

Several of the intervenors noted in their initial comments that Duke’s proposed GSA Program would benefit non-participants. UNC-Chapel Hill stated in its Initial Comments that “the Duke Energy filing would unfairly advantage non-participating customers by passing the benefits from the procurement of renewable energy below Duke Energy’s avoided rate cost to non-participating customers.”⁴⁴ SACE similarly stated “[t]he GSA Program, as proposed, does not comply with H.B. 589 because it would advantage

⁴³ *Id.* at 4; *Joint Comments of Apple, Inc. and Google, LLC*, p. 6; *DoD/FEA Initial Comments on Proposed Rider GSA*, p. 2; *Comments of the North Carolina Clean Energy Business Alliance*, p. 13; *Initial Comments of the Public Staff*, p. 12; *Initial Comments of the University of North Carolina at Chapel Hill*.

⁴⁴ *Initial Comments of the University of North Carolina at Chapel Hill*, pp. 3-4.

non-participating customers who would benefit from the cost savings of energy and capacity procured by Duke for GSA Customers below Duke's avoided cost."⁴⁵ NCSEA concurs with SACE, and notes that N.C. Gen. Stat. § 62-159.2(e) specifically directs the Commission to ensure that non-participating customers are "neither advantaged nor disadvantaged" by the GSA Program. SACE elaborated that "[i]n fact, any cost savings derived from energy and capacity procured for GSA Customers below Duke's avoided cost will pass to Duke's general customer base."⁴⁶ NCSEA, UNC-Chapel Hill, and SACE agree that Duke's proposed GSA Program proposal violates N.C. Gen. Stat. § 62-159.2(e) and should be rejected by the Commission.

II. THE INITIAL COMMENTS SHOW THAT DUKE'S GSA PROPOSAL WILL NOT WORK FOR RENEWABLE ENERGY SUPPLIERS

NCCEBA notes in its initial comments that "Duke's Proposed GSA Program and Rider GSA fail to comply with the GSA Program Statute in several material respects, and utterly fail to meet the needs and expectations of . . . renewable energy suppliers[.]"⁴⁷ NCSEA notes that several of the flaws that cause Duke's proposed GSA Program to be unworkable for participants are also problematic for clean energy suppliers. NCSEA shares SACE's concern that "While GSA Suppliers will likely be able to successfully develop projects with 20-year contract terms, it is not clear that Suppliers will be able to develop projects under terms of 2 and 5 years."⁴⁸ This goes to the argument set forth above that Duke has failed to provide a sufficient array of contract term lengths.

⁴⁵ *Initial Comments of SACE*, p. 10.

⁴⁶ *Id.* at 11.

⁴⁷ *Comments of the North Carolina Clean Energy Business Alliance*, p. 2.

⁴⁸ *Initial Comments of SACE*, p. 12.

NCSEA also shares the concern of NCCEBA and the Public Staff that Duke inappropriately includes in its proposed GSA Program the right to control and dispatch the clean energy resources participating in the program. NCCEBA states that “Duke unlawfully proposes that all renewable energy suppliers will be subject to control and economic dispatch by Duke.”⁴⁹ The Public Staff similarly notes that “G.S. 62-159.2 does not include the same language allowing economic dispatch of the procured resources that is included in the competitive procurement statute.”⁵⁰ As discussed further in Section III below, NCSEA supports the position of other intervenors that Duke inappropriately ties the GSA Program to the CPRE Program. NCSEA believes that Duke’s proposal to require economic dispatch is another example of this inappropriate linkage that is especially problematic for clean energy suppliers.

III. DUKE’S GSA PROPOSAL IS INCONSISTENT WITH N.C. GEN. STAT. § 62-159.2 AND FRUSTRATES LEGISLATIVE INTENT

NCCEBA states in its initial comments that “[i]t is critical that the GSA Program approved by the Commission effectuate the intent of the statute.”⁵¹ In addition to the flaws in Duke’s proposed GSA Program discussed above, the proposal is inconsistent with N.C. Gen. Stat. § 62-159.2 and frustrates the General Assembly’s intent in adopting the statute.

A. THE CPRE PROGRAM AND THE GSA PROGRAM ARE UNRELATED IN THE LAW

Duke’s *Application* ties its proposed GSA Program to its CPRE Program. NCSEA agrees with NCCEBA that “if the General Assembly had intended for the GSA Program to be integrally connected to the CPRE Program, as Duke has proposed, it would have said

⁴⁹ *Comments of the North Carolina Clean Energy Business Alliance*, p. 13.

⁵⁰ *Initial Comments of the Public Staff*, p. 6.

⁵¹ *Comments of the North Carolina Clean Energy Business Alliance*, p. 4.

so in the legislation.”⁵² NCSEA further agrees with the Public Staff that “the plain language of the statutes clearly and unambiguously delineate the separate goals and purposes for each program, and include specific operating parameters and timeframes that reflect the independent nature of the two programs.”⁵³ Duke’s inappropriate proposal to link the GSA Program to the CPRE Program would have a chilling effect on participation in the GSA Program by both customers and suppliers.

An additional problem caused by linking the GSA Program to the CPRE Program is the allocation of interconnection costs: some GSA Program participants will be responsible for paying interconnection network upgrade costs but other participants will not. NCSEA agrees with the Public Staff that “[u]nder the Self Supply option, however, it would still remain possible to more clearly assign interconnection upgrade costs associated with potential GSA projects to those particular projects” and that, as it is currently proposed, the effect would be that of “biasing participation in the GSA Program further towards the Standard Offer option through the externalization of costs or faster implementation.”⁵⁴

Duke’s proposed GSA Program uses the CPRE Tranche Weighted Average Price to determine the GSA Product Charge paid by participants choosing the “Standard Offer” option.⁵⁵ Per Duke’s CPRE Plan, the CPRE Tranche Weighted Average Price does *not* include interconnection network upgrade costs, as such upgrades will be included in Duke’s rate base.⁵⁶ However, GSA suppliers in the “Self-Supply” option will be

⁵² *Id.* at 5.

⁵³ *Initial Comments of the Public Staff*, p. 4.

⁵⁴ *Id.* at pp. 9-10.

⁵⁵ *Application*, p. 19

⁵⁶ *See, Order Modifying and Approving Joint CPRE Program*, pp. 25-26, Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 (February 21, 2018).

responsible for interconnection network upgrade costs. Therefore, as a practical matter, a GSA participant choosing the “Self-Supply” option will be responsible for interconnection network upgrade costs while a GSA participant choosing the “Standard Offer” option will not. This highlights the inherent issues caused by interlinking the GSA and CPRE programs.

B. DUKE’S PROPOSED GSA PROGRAM UNNECESSARILY AND UNREASONABLY DELAYS THE PROVISIONS OF N.C. GEN. STAT. § 62-159.2

In addition to being inconsistent with the statute, Duke’s proposal to link the GSA Program to the CPRE Program also results in unnecessary and unreasonable delays that frustrate the provisions of N.C. Gen. Stat. § 62-159.2. Because Duke’s proposed GSA Program links the GSA Program to the CPRE Program, it “would prevent GSA Customers and renewable energy suppliers from consummating transactions outside of the CPRE program timeline[.]”⁵⁷ NCSEA agrees with NCCEBA and the Public Staff that this would result in an unnecessary delay in the implementation of the GSA Program.⁵⁸

N.C. Gen. Stat. § 62-159.2(d) states that the GSA Program “shall be offered by the electric public utilities subject to this section for a period of five years or until December 31, 2022, whichever is later.” While the General Assembly did not establish a date for the GSA Program to begin, it is apparent that they intended it to begin either on January 1, 2018 or soon thereafter. In its initial comments, NCCEBA noted that “The GSA program would not open the Self-Supply option to participants until January 1, 2019, and the earliest contracts would not be executed until April 2019. This is 18 to 21 months after House Bill

⁵⁷ *Comments of the North Carolina Clean Energy Business Alliance*, pp. 9-10.

⁵⁸ *Id.*; *Initial Comments of the Public Staff*, p. 11.

589 became law, and there is simply no reasonable justification for the delay.”⁵⁹ In the time since NCCEBA filed its initial comments, Duke has announced that Tranche 1 of the CPRE Program will be delayed, which would similarly delay implementation of the GSA Program if Duke’s proposal is approved by the Commission.

C. DUKE’S PROPOSED GSA PROGRAM PROCURES RECs, NOT ENERGY AND CAPACITY AS REQUIRED BY LAW

Several of the intervenors note that Duke’s proposed GSA Program is, at its core, a program for the procurement of RECs.⁶⁰ NCSEA agrees with NCCEBA and SACE that customers could procure RECs prior to the adoption of N.C. Gen. Stat. § 62-159.2.⁶¹ As such, it is nonsensical for the General Assembly to have adopted a statute directing Duke to create a REC procurement program. NCSEA also believes that the fact that Duke’s proposed GSA program is little more than a program for customers to procure RECs runs counter to the statutory directive that, through the GSA Program, Duke “shall procure energy and capacity on behalf of the participating customer.”⁶²

IV. NCCEBA’S ALTERNATIVE PROPOSAL, IF MODIFIED, IS CONSISTENT WITH N.C. GEN. STAT. § 62-159.2

In their initial comments, NCCEBA proposed an alternative GSA Program that complies with the statutory constraints set forth in N.C. Gen. Stat. § 62-159.2 while also providing the financial benefits and flexibility to make the GSA Program attractive to cost-sensitive large energy consumers looking to procure clean energy.

N.C. Gen. Stat. § 62-159.2(b) states that “Eligible customers shall be allowed to negotiate with renewable energy suppliers regarding price terms.” In their initial

⁵⁹ *Comments of the North Carolina Clean Energy Business Alliance*, p. 15 (internal citations omitted).

⁶⁰ *Initial Comments of SACE*, p. 7; *Comments of Wal-Mart Stores East, LP and Sam’s East, Inc.*, p. 4.

⁶¹ *Comments of the North Carolina Clean Energy Business Alliance*, p. 14; *Initial Comments of SACE*, p. 6.

⁶² N.C. Gen. Stat. § 62-159.2(b).

comments, the Public Staff notes that “some customers that choose to participate in the GSA Program may not wish to select the renewable energy facilities from which the utility procures energy or capacity on their behalf, or to negotiate price terms[.]”⁶³ NCSEA agrees with the Public Staff’s recognition that not all participants will be interested in negotiating directly with renewable energy suppliers. The above-quoted portion of N.C. Gen. Stat. § 62-159.2(b) is permissive, allowing participants to negotiate with renewable energy facilities; it is not mandatory to require participants to negotiate with renewable energy facilities.

NCSEA supports NCCEBA’s alternative GSA Program, but NCSEA recommends that the Commission modify NCCEBA’s proposal to allow a participant in the GSA Program to opt to have the utility select the renewable energy supplier on behalf of the GSA Program participant. Consistent with Section III.A. above, NCSEA believes that this “Standard Offer” option must be wholly unrelated to the CPRE Program, in contrast to Duke’s proposed Standard Offer option.

V. CONCLUSION

As set forth in these Reply Comments, Duke’s proposed GSA program fails to comply with the requirements of, and imposes restrictions not found in the plain language of, N.C. Gen. Stat. § 62-159.2. More importantly, Duke’s proposed GSA program fails to provide large energy consumers with a commercially viable option to procure clean energy from renewable suppliers.

For these reasons, NCSEA respectfully requests that the Commission reject Duke’s proposal and instead direct Duke to engage stakeholders, including a wide array of large

⁶³ *Initial Comments of the Public Staff*, p. 8.

energy consumers, to craft a green tariff that complies with the language and legislative intent of N.C. Gen. Stat. § 62-159.2.

Respectfully submitted, this the 20th day of April, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that all persons on the docket service list have been served true and accurate copies of the foregoing Comments by hand delivery, first class mail deposited in the U.S. mail, postage pre-paid, or by email transmission with the party's consent.

This the 20th day of April, 2018.

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