

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	<b>INITIAL COMMENTS OF THE PUBLIC STAFF</b>
Petition for Approval of Green Source Advantage Program and Rider GSA to	)	
Implement N.C. Gen. Stat. § 62-159.2	)	
	)	

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Christopher J. Ayers, and, pursuant to the Commission’s January 26, 2018, *Order Establishing Proceeding to Review Proposed Green Source Rider Advantage Program and Rider GSA* in the above captioned docket, respectfully submits the following initial comments on the Green Source Advantage Program (“GSA Program”) and Rider GSA tariffs filed by Duke Energy Carolinas, LLC (“DEC”), and Duke Energy Progress, LLC (“DEP”) on January 23, 2018.

Background:

G.S. 62-159.2, enacted as part of House Bill 589 (S.L. 2017-192) on July 27, 2017, required DEC and DEP (collectively, “Duke,” or the “Companies”) to each file with the Commission applications for approval of a new program for the direct procurement of new renewable energy resources by certain large nonresidential customers. The statute calls for the program to be offered over a period of five years and to be capped at no more than a combined 600 megawatts (MW) of

capacity between the two utilities. In addition, G.S. 62-159.2 requires specific allocations to major military installations (at least 100 MW), and The University of North Carolina (at least 250 MW), with the remaining being available to other new and existing nonresidential customers with either a contract demand (i) equal to or greater than one MW or (ii) at multiple service locations that, in aggregate, is equal to or greater than five MW. The statute requires the specific allocations to be fully subscribed to prior to December 31, 2020; otherwise the remaining unused capacity will be reallocated to any eligible participant. In addition, if any portion of the 600 MW is not awarded by the end of the five-year period, the remaining capacity shall be incorporated into future competitive procurements offered by DEC and DEP in their Competitive Procurement for Renewable Energy (“CPRE Program”) offered pursuant to G.S. 62-110.8(a).

Pursuant to G.S. 62-159.2(b), each electric public utility is obligated to procure energy and capacity on behalf of the participating customer, but customers have the option to select the new renewable energy facility from which the electric public utility procures the energy and capacity, and may also negotiate directly with the suppliers regarding price terms. The utility shall include standard terms and conditions as part of their application, and provide a range of terms, between two years and 20 years, from which the participating customer may elect. The standard contract terms and conditions shall also include commercially reasonable financial assurance requirements for participating customers.

G.S 62-159.2(e) directs the Commission to determine the appropriate bill credit participating customers will receive for the energy received from the

renewable energy facility, while ensuring that all other (non-participating) customers “are held neutral, neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the program customer.” The bill credit cannot exceed the utility's avoided cost.

On January 23, 2018, the Companies jointly filed a petition for approval of a proposed GSA Program and their respective Rider GSA tariffs. Duke’s petition summarized the elements of its proposed GSA Program, and stated that the program was designed to implement the requirements of G.S. 62-159.2, as well as to provide a cost-effective option to facilitate the direct procurement of new renewable energy resources on behalf of the participating customers.

Comments on Duke’s proposed GSA Program:

The Public Staff has reviewed GSA Program filing made by Duke and agrees that the 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. The Public Staff does, however, take exception to several aspects of Duke’s proposed implementation of the GSA Program, as discussed in each section below:

I. Linkage between GSA Program and CPRE Program:

Duke’s application indicates that it has developed two separate options for eligible customers (“GSA Customers”) to participate. They first describe the “Standard Offer” option, under which the Companies would procure renewable energy resources on behalf of the GSA Customers that chose to participate under

this approach through integration with the CPRE Program, also enacted as part of House Bill 589, which directs the utilities to competitively procure 2,660 MW of renewable energy resources over a 45 month period. Under the Standard Offer option, the Companies would utilize the requests for proposals (RFPs) conducted as part of the CPRE program to identify and select the renewable energy resources used to meet the capacity requested by GSA customers that selected that option.

Duke also proposed a second, "Self Supply" option, under which GSA Customers could select the new renewable energy facility from which the utility would procure energy and capacity and also allow customers to negotiate directly with renewable energy suppliers regarding price terms, as called for in G.S. 62-159.2(b).

The Public Staff generally supports the structure of Duke's Self Supply option, but disagrees with Duke's Standard Offer option as currently proposed, since it links the implementation of the GSA Program pursuant to G.S. 62-159.2 to the CPRE Program under G.S. 62-110.8 in a way that is counter to the timeframes and purposes called for in each statute. While the Public Staff recognizes these GSA and CPRE programs as both originating in House Bill 589, 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. G.S. 62-159.2(d) provides that:

The 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, and shall not exceed a combined 600 megawatts (MW) of total capacity. ... If any portion of the 600 megawatts (MW) of renewable energy capacity provided for in this section is not awarded prior to the expiration of the program, it shall be reallocated to and included in a competitive procurement in accordance with G.S. 62-110.8(a).

This provision clearly indicates that the GSA Program should operate independently from the CPRE Program for its five-year eligibility period. Only at the completion of the five years would any unawarded capacity be included in the CPRE Program. G.S. 62-110.8(a) also reinforces this separate track for renewable energy procurement under each program, providing that:

...

Subject to the limitations set forth in subsections (b) and (c) of this section, the electric public utilities shall issue requests for proposals to procure and shall procure, energy and capacity from renewable energy facilities in the aggregate amount of 2,660 megawatts (MW), and the total amount shall be reasonably allocated over a term of 45 months beginning when the Commission approves the program. **The Commission shall require the additional competitive procurement of renewable energy capacity by the electric public utilities in an amount that includes all of the following:** (i) any unawarded portion of the initial competitive procurement required by this subsection; (ii) any deficit in renewable energy capacity identified pursuant to subdivision (1) of subsection (b) of this section; **and (iii) any capacity reallocated pursuant to G.S. 62-159.2.** [emphasis added]

...

This provision clearly provides that the utilities seek to procure an aggregate amount of 2,660 MW during the first competitive procurement period, and that only after the initial procurement was completed would any reallocated capacity from the GSA Program be included in additional competitive procurements.

In addition, the goals for each program clearly support a different desired outcome by the General Assembly. G.S. 62-110.8(a) provides that the purpose of the mandatory competitive procurement program is to add “renewable energy to the State's generation portfolio in a manner that allows the State's electric public utilities to continue to reliably and cost-effectively serve customers' future energy needs.” This goal is further heightened in subsection (b) through its direction that the utilities may satisfy the procurement mandate through either (i) utility-owned facilities (self-built or asset acquisitions) or (ii) renewable energy power purchase agreements (PPAs) with third party generators that provide the utilities with the “rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources.” On the other hand, the provisions in G.S. 62-159.2 indicate that participation in the program is voluntary on the part of eligible nonresidential customers, and while the statute does not prohibit the utility from satisfying the voluntary procurement through utility-owned resources, it empowers the participating customer with the option to select the new renewable energy facility from which the utility will procure the energy and capacity. Furthermore, 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.

The Public Staff notes that the large customer procurement program enacted in G.S. 62-159.2 appears similar in many ways to the Green Source (Rider GS) voluntary pilot program approved by the Commission in its December 19, 2013, *Order Approving Rider* in Docket No. E-7, Sub 1043 and offered by DEC

from December 2013 to December 2016.<sup>1</sup> The purpose of that program was to allow customers the opportunity to elect to displace some or all of the energy supplied for the customer's new load with renewable energy, and was somewhat similar in structure to the program envisioned in G.S. 62-159.2, albeit on a smaller scale.<sup>2</sup>

The Public Staff believes that the Self Supply option proposed by Duke generally conforms more to the voluntary nature of G.S. 62-159.2, in which potential customers are empowered to select the specific facilities from which the utility will procure the energy and capacity, and can also negotiate directly with renewable energy facilities of their choice over price terms. For example, if a potential GSA Customer is willing to pay a higher premium for certain resources that are located in closer proximity to their facility, or that may provide different renewable energy characteristics, it may choose to do so at their discretion, so long as the bill credit they receive from the utility for the renewable energy and capacity procured is at the level determined by the Commission, leaves non-participating customers harmless, and does not exceed the utility's avoided cost.

While the Public Staff appreciates Duke's efforts to seek to efficiently utilize the resources it is expending to implement the CPRE Program for GSA Program

---

<sup>1</sup> The legislative bill summary accompanying the enacted version of House Bill 589 also references the expired Green Source rider in its discussion of Part III of the bill, and refers to the program as (Green Source Rider Program Continued). See August 8, 2017 bill analysis of House Bill 589: Competitive Energy Solutions for NC, at pp. 4-5. Online at: [https://dashboard.ncleg.net/api/Services/BillSummary/2017/H589-SMRI-69\(sl\)-v-5](https://dashboard.ncleg.net/api/Services/BillSummary/2017/H589-SMRI-69(sl)-v-5).

<sup>2</sup> The original Rider GS was available for a three-year period, or until the annual aggregate program cap of approximately 1,000,000 annual megawatt-hours (MWh) was reached, whichever occurred first. The annual program cap was never reached.

purposes, the statutory language supports the independent offering of these two programs. As such, the Public Staff believes that Duke's Standard Offer option, as currently proposed, does not align with the independent implementation of these two programs.

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, as contemplated under the Self Supply option. It is appropriate for Duke, therefore, to identify a separate mechanism to help identify and select renewable energy facilities to meet the needs of those customers. However, the Public Staff believes that adding the additional capacity to the existing CPRE procurement as currently proposed by Duke under the Standard Offer option fails to recognize the distinct structures established for both programs by the General Assembly.

II. Interconnection costs and application status:

In addition to the implementation timeframes, operational limitations, and the mandatory versus voluntary nature of the two programs, other factors also weigh against the integration of the two programs as proposed by Duke. First, Duke has included in its CPRE Program Plan certain requirements related to the use of grouping studies to evaluate grid upgrade costs, as well as its plan to recover network upgrade costs through future adjustments to general costs of service, rather than assigning the costs to a specific renewable energy facility. In our comments in the CPRE proceeding, we noted our preference for the traditional

approach of assigning all interconnection costs to the interconnection customer, but found the approach proposed by Duke in its CPRE Program acceptable for the purposes of the initial CPRE Tranche. The Commission in its February 21, 2018 *Order Modifying and Approving Joint CPRE Program* in Docket No. E-2, Sub 1159 and E-7, Sub 1156, (“CPRE Program Order”) agreed in part with Duke and the Public Staff that the unique circumstances of implementing the CPRE Program on the timeline established by the General Assembly justified Duke’s proposed cost recovery approach in that docket.

In this instance, Duke’s use of the CPRE Program to identify and select projects for the Standard Offer GSA option would further expand the utility’s recovery of network upgrade costs associated with selected projects even further from traditional cost causation principles. This arrangement would make ensuring that non-participating customers are neither advantaged nor disadvantaged much more difficult, since the costs under the Standard Offer option would not be assigned to a specific project. Under 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.

That being said, the Public Staff notes that since the utilities are charged with implementing these two programs on parallel tracks, it is also critical to ensure that eligibility for the programs are not biased in favor of one program over another. For example, the eligibility criteria, such as the status of a project’s interconnection request for participating in CPRE versus GSA should not necessarily be different. If, however, the utility’s Standard Offer approach as proposed by Duke is

maintained, the fact that network upgrade costs identified under the CPRE grouping study may not be assigned to specific projects, along with the requirement that renewable energy suppliers must have a completed system impact study to be selected under the Self Supply option, would potentially have the effect of biasing participation in the GSA Program further towards the Standard Offer option through the externalization of costs or faster implementation.

III. Basis for Bill Credit:

The Public Staff notes that G.S. 62-159.2(e) provides that:

In addition to the participating customer's normal retail bill, the total cost of any renewable energy and capacity procured by or provided by the electric public utility for the benefit of the program customer shall be paid by that customer. The electric public utility shall pay the owner of the renewable energy facility which provided the electricity. The program customer shall receive a bill credit for the energy as determined by the Commission; provided, however, that the bill credit shall not exceed utility's avoided cost. The Commission shall ensure that all other customers are held neutral, neither advantaged nor disadvantaged, from the impact of the renewable electricity procured on behalf of the program customer.

This section authorizes the Commission to determine the appropriate basis for the bill credit to be received by the GSA Customer, ensuring that all other (non-participating) customers are held neutral, neither advantaged nor disadvantaged from the impact of the renewable energy procurement, the only specific limitation being that the bill credit could not exceed the utility's avoided cost.

The Public Staff is still considering various bill credit options to ensure that non-participating customers are held neutral, including the appropriateness of utilizing the utility's current forecast of its avoided cost, based on the utility's most

recently Commission-approved avoided cost methodology and calculated over the term of the PPA, and may provide additional recommendations regarding the appropriate basis for the bill credit in its reply comments in this proceeding. To the extent the Commission's administratively determined avoided cost rates are used, 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.

The Public Staff does not agree at this time with Duke's proposed utilization of the CPRE Tranche weighted average price to form the basis for the bill credit under the Self Supply option for the initial GSA offering period. Due to the unknown nature of that value at this time, it makes participation in the GSA Program impractical for prospective customers, since they have no basis on which to evaluate the bill credit they would receive relative to the price they, or the utility negotiating on their behalf, would pay to renewable energy suppliers. Waiting to begin implementation of Rider GSA until such time as the CPRE Tranche weighted average price is determined as proposed by Duke unduly delays implementation of the Program, and would potentially result in further congestion surrounding implementation of the CPRE Tranche 2 and the first phase of Rider GSA.<sup>3</sup> The Public Staff recognizes, however, that the CPRE Tranche weighted average price will provide a reflection of the market-based price for renewable energy resources

---

<sup>3</sup> The utilities note this integration of the two programs could result in some implementation challenges that would result in changes to the implementation timeframes for both the CPRE and the GSA Program. See footnote 9 on p. 10 of the utilities' January 23, 2018 joint application.

and may be an appropriate reference point for the Commission to consider in establishing the bill credit for future GSA enrollment periods.

The Public Staff also notes, however, that if the Commission determines that the negotiated unbundled PPA price should form the basis for determining the bill credit, the Public Staff believes that any REC prices negotiated between the GSA Customer and a renewable energy supplier should be a positive value to prevent potential gaming of the bill credit mechanism established by the Commission and ensure that non-participating customers remain neutral as to the impact of the GSA Program, i.e., that the bill credit the customer receives reflects the price paid for the energy and capacity procured on their behalf.

#### IV. Standard Contract Terms and Conditions

The Public Staff notes that G.S. 62-159.2(b) directs the utilities to provide standard contract terms and conditions for participating customers and for renewable energy suppliers. Duke included copies of its proposed Rider GSA and GSA-1 tariffs as Attachment A to its program application, including terms for GSA customers, but Duke did not submit a standard PPA for use under the GSA Program. Duke noted in footnote 15 of its Joint Application that the commercial terms of the GSA PPA are planned to be the same in all material respects as the pro forma PPA filed with the Commission for approval as part of the CPRE Program. In its CPRE Program Order, the Commission accepted Duke's pro forma PPA for use in the Tranche 1 CPRE RFP Solicitation, but directed Duke to continue its discussions with interested parties regarding potential revisions to the pro forma

PPA or to provide limited opportunity for negotiations on terms and conditions. The Public Staff agrees that it is appropriate for the CPRE pro forma PPA to form the basis for the GSA PPA to be used for the GSA suppliers participating under the Self Supply option, subject to the following modifications: (1) further revisions recommended by the Public Staff and other parties in the CPRE Docket that are ultimately incorporated into the pro forma PPA; (2) elimination of the provisions dealing with the transfer of renewable energy and environmental attributes; and (3) modification of the curtailment or control instruction provisions, as discussed below.

With regard to the provisions in the pro forma PPA regarding the transfer of renewable energy and environmental attributes to the utilities, these provisions are not necessary in a GSA PPA under the Self Supply option, since the REC transaction will be unbundled from the PPA and will be handled in a separate transaction between the GSA Customer and the GSA supplier.

With regard to the provisions in the pro forma PPA dealing with “control instructions” and emergency conditions, the Public Staff notes that G.S. 62-159.2 does not include the same language in G.S. 62-110.8(b) that requires third parties to “commit to allow the procuring public utility rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources.” As such, the language in the pro forma PPA should be amended accordingly to reflect this different obligation. Nonetheless, the Public Staff continues to support reasonable control instructions and system emergency instructions that would be applicable in other PPAs that the utilities would negotiate

with qualifying facilities that are not eligible for standard avoided cost rates in order to give the utilities flexibility to continue to operate the grid in a safe, reliable, and efficient manner. The Public Staff again stresses the need for non-discriminatory and transparent procedures in place for curtailment resulting from control instructions and system operator instructions, and requests that the Commission require the utilities to include information on the curtailment of any renewable energy suppliers participating in the GSA Program in its curtailment reports as required in Docket No. E-100, Sub 148, as further modified by the Commission's CPRE Program Order, to similarly ensure that the curtailment provisions are being implemented in a transparent and non-discriminatory fashion.

V. Length of Term:

The Public Staff notes that G.S. 62-159.2(b) directs the utilities to provide standard contract terms and conditions for participating customers and renewable energy suppliers that provide a range of terms, between two years and 20 years, from which the participating customer may elect. Duke's proposal provides only 20-year terms under the Standard Offer program, and only two, five, and 20 year terms under the Self-Supply Option. The Public Staff believes that other terms between five and 20 years may also be desired by some customers seeking to participate in the program, and recommends that Duke make other term options available to customers.

VI. Administrative Fees and Costs

Duke's proposed GSA Program includes application fees of \$2,000 per customer, which is intended to cover the Companies' costs to review and process the application and, if approved, execute required contracts. The application fee will be refunded to the customer only in the event that the customer's application is rejected due to insufficient GSA Program capacity. In addition, the GSA Program includes a monthly administrative charge of \$375 per month, plus \$50 per billed account monthly. Duke indicates that the monthly GSA Administrative Charge is intended to recover costs for manual billing, labor, program management, and support costs.

The Public Staff does not take exception with either of these fees and charges at this time, but has requested additional information from the utilities to provide the supporting basis for these fees and charges and may comment further in its reply comments on the reasonableness of these fees. The Public Staff acknowledges that the inclusion of appropriate administrative fees and charges helps to ensure that non-participating customers do not bear any costs associated with the Companies' implementation of the GSA program.

VII. Allocation among customers, queueing, and aggregation:

The Public Staff agrees that Duke's proposal adheres to the allocation of capacity among eligible GSA Program Customers and does not take exception with the utility's proposal to allocate the remaining un-designated capacity proportionally based on a load ratio share between the two utilities (160 MW to

DEC and 90 to DEP), nor does the Public Staff take exception with the utility's proposed queueing process for each of the specific allocation categories.

The Public Staff supports Duke's requirement that projects that seek to aggregate their accounts for participation in the GSA be located in the same utility service territory and that the renewable energy facility from which the utility acquires energy and capacity on their behalf also be located in the same utility service territory. This reflects the statutory requirement that each utility implement separate GSA programs, and helps to ensure that the bill credit associated with the procurement are reflective of the utility's price to acquire those resources.

Summary:

In conclusion, the Public Staff respectfully requests that the Commission consider the issues and other considerations raised in these comments.

Respectfully submitted this the 23<sup>rd</sup> day of February, 2018.

PUBLIC STAFF  
Christopher J. Ayers  
Executive Director

David T. Drooz  
Chief Counsel

Electronically submitted  
/s/ Tim R. Dodge  
Staff Attorney

4326 Mail Service Center  
Raleigh, North Carolina 27699-4300  
Telephone: (919) 733-6110  
[tim.dodge@psncuc.nc.gov](mailto:tim.dodge@psncuc.nc.gov)

**CERTIFICATE OF SERVICE**

I certify that a copy of these Initial Comments have been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 23<sup>rd</sup> day of February, 2018.

Electronically submitted  
/s/ Tim R. Dodge